**Attachment 1**

ARA temporary exemption application 2015

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# Scope of report

I have been asked to provide an expert report to provide guidance to the Commission in relation to technical matters arising from the Australian Rail Authority (ARA) application for temporary exemptions.

Details of my experience and expertise are contained in Appendix 1.

Michael Small Consulting

31 August 2015

# Introduction

The ARA is a peak industry body representing railway operators in Australia.

It seeks temporary exemptions on behalf of its members (listed in Appendix 1 of the application) under the Disability Discrimination Act 1992 (Cth) (DDA), from a number of provisions in the *Disability Standards for Accessible Public Transport* 2002 *(Cth)* (Transport Standards), and from a number of provisions in the *Disability (Access to Premises – Buildings) Standards* 2010 *(Cth)* (Premises Standards).

In its application the ARA states that while it and its members acknowledge that the Transport Standards have been effective in addressing accessibility to public transport there are a number of areas where modifications could be made to ensure compliance requirements can be practically implemented. The ARA has been seeking to achieve long-term modifications of the Transport Standards to better reflect the sectors concerns.

The application states that many of the requirements for which the ARA is seeking exemption fail to take into account the distinct nature and limitations of railway infrastructure and operations.

The ARA application provides a description of a range of consultative processes through which its members have sought to identify effective access solutions to a range of application difficulties faced by the sector.

This has included

* state based accessibility committees and forums involving representatives from a range of organisations representing people with disability
* direct customer consultation or consultation with specific disability groups
* through membership of the Australian Government’s Accessible Public Transport National Advisory Committee (APTNAC)

The ARA application claims that reporting requirements attached to earlier exemptions were met through providing updates on progress and developments to the Australian Human Rights Commission (the Commission) through the Rail Industry Safety and Standards Board (RISSB) Code development process and that the Commission had not expressed dissatisfaction with that reporting mechanism.

# References and documents considered

In providing this report I have considered the following documents

* *Disability Standards for Accessible Public Transport* 2002
* *Disability (Access to Premises – Buildings) Standards* 2010
* The 2015 ARA exemption application and attachments
* The Commission exemption application decision of 22 January 2007
* The Commission exemption application decision of 5 November 2007
* ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006[[1]](#footnote-1)
* Relevant Australian Standards referenced in the Transport Standards and Premises Standards
* Submissions from
	+ Mr Andrew Stewart
	+ Accessible Public Transport Jurisdictional Committee (APTJC)
	+ All Aboard network
	+ Association of Consultants in Access Australia (ACAA)
	+ People with Disability Australia (PWDA)
	+ Deafness Council of NSW
	+ Deaf Australia
	+ Minister for Transport Queensland
	+ Victorian Council of Social Services
	+ Mr Peter Kerley
	+ ARA supplementary submission to the Commission dated 14 August 2015

# Overview of submissions

### Mr Andrew Stewart

Mr Stewart’s submission is principally concerned with the application of Hearing augmentation-listening systems clause 26.2.

Mr Stewart notes that the requirements for areas to be covered by a hearing augmentation system are based on an Australian Standard that is now 23 years old.

Mr Stewart proposes that any exemption must be based on clear evidence of which existing conveyances are affected and should not apply to new rail conveyances.

Mr Stewart notes that while alternative technologies such as passenger information systems and apps can be effective many hearing impaired people cannot use them well.

### Accessible Public Transport Jurisdictional Committee (APTJC)

The Transport Standards require the Commission to consult with the APTJC before granting any exemption.

The APTJC is a sub-committee of the National Accessible Public Transport Advisory Committee (NAPTAC) and membership includes of all state and territory governments and the Australian Local Government Association (ALGA).  The Attorney-General’s Department is an observer on APTJC.

The APTJC members are broadly supportive of the application as a true reflection of the difficulties in applying the Transport Standards in the rail environment. Majority support was given in some instances with one member offering support if existing conditions were reinstated.

### All Aboard network

All Aboard is a network of individuals and representatives of community and local government organisations, primarily in Victoria, who have an interest in the accessibility of public transport for all people who wish to use it.

All Aboard does not support the granting of a temporary exemption that covers the entire industry expressing concern that to do so would send the wrong message to those that are fulfilling their responsibilities under the standards and may lead to regressive accessibility practices in some cases.

All Aboard proposed that each rail operator and provider should apply individually for any temporary exemptions that may be applicable in that particular jurisdiction or transport environment.

All Aboard network also expresses concerns about a number of other issues including:

* Member concerns that operators are still purchasing conveyances that do not meet the requirements of the Transport Standards
* Member concerns that compliance target dates have been, or will be missed.
* Members views that consultation has been irregular and generally ad hoc
* Member views that reporting on measures taken in relation to any conditions attached to current exemptions have not been adequate.

Having expressed a general view that the exemptions should not be granted All Aboard submitted comments on each of the individual applications on the assumption that the Commission would proceed with the application from ARA on behalf of its members.

While All Aboard does not support some specific applications in general the network proposes that if the Commission were to grant any exemption it should be subject to the conditions attached to current exemptions, subject to a number of additional comments or proposals.

All Aboard made a supplementary submission concerning what it sees as a significant conflict of interest arising from a cross-over in membership between the ARA and APTJC. All Aboard expressed concern that effectively a group of ARA members (state government transport bodies) are charged with providing advice to the Commission on the application for temporary exemptions by the ARA.

### Association of Consultants in Access Australia (ACAA)

ACAA is a national membership-based professional association for people working to achieve accessibility of the built environment for people all. It is the peak national body for access consultancy in Australia.

The ACAA submission does not comment on specific applications, but offers a view on the general approach that could be taken.

ACAA proposes that rather than grant broad exemptions any non-compliance at specific locations should be itemised and be subject to the preparation of Alternative Building solution reports. These reports should document both the enduring non-compliances and the local management process by which equivalent access can be provided in the form of direct assistance or other means.

### People with Disability Australia (PWDA)

PWDA is a leading national disability rights, advocacy and representative organisation of and for people with disability.

PWDA notes that the current application mirrors earlier applications, but omits reporting responsibilities and reference to provisions such as direct assistance.

PWDA states that a monitoring and reporting mechanism is essential for any exemptions granted and that most of the application cannot be supported unless there is such a mechanism as a condition.

PWDA proposes that rather than the ARA continually making exemption applications its members should seek to comply with the prescriptive (deemed-to-satisfy) requirements of the Transport Standards and Premises Standards wherever possible.

Where this is not possible PWDA proposes that ARA members should develop site-specific approaches to provide Equivalent access, including the use of direct assistance where necessary and any solutions developed should be recorded systematically to allow rail industry-wide application and certainty for customers with disability.

PWDA proposes that where Equivalent access solutions are not feasible individual ARA members should rely on a defence of unjustifiable hardship rather than continually seek protection through the exemption process.

Where PWDA offers support for any of the applications it is generally conditional on reporting conditions of the existing exemption being maintained and monitored through reporting to the Commission and NAPTAC.

### Deafness Council of NSW

The Deafness Council of NSW’s submission is principally concerned with the application of Hearing augmentation-listening systems clause 26.2. The Council expressed concern about the quality of the consultation with the sensory disability community and stated that broad industry-wide exemptions are counter-productive.

The Deafness Council proposed that exemption applications should come from specific operators who might rely on the defense of unjustifiable hardship if they cannot meet requirements for their conveyances or premises.

### Deaf Australia

Deaf Australia questioned the claims of ARA that it had been consulted with or received any information from ARA about this application.

Deaf Australia noted access to information is crucial for deaf people and people with hearing impairments to enable them to be fully informed on matters such as taking the right train.

Deaf Australia stated it did not support the exemption application because the organisation had not been consulted in the past on ways of achieving best practice in the delivery of visual information and that Deaf Australia has not seen any evidence of a plan to implement the rolling out of passenger information displays at all platforms.

### Minister for Transport Queensland

The Queensland Minister for Transport supports the application noting that it highlights the distinct nature of rail services and the challenges in practically implementing rigid compliance requirements in the rail environment.

The Minister also proposes that granting the exemptions will allow for planned and future projects to be effectively implemented and assist in the ongoing development of alternative solutions to provide equivalent access for people with disabilities.

### Victorian Council of Social Services (VCOSS)

VCOSS opposes the application for the following reasons:

* The application does not meet the objectives of the Act, which include reducing discrimination and equality before the law
* The main basis for the exemption appears to be unjustifiable hardship, which is already exempted under the Standards
* The applicant does not provide any public transport services; they are applying on behalf of their members, lacking clarity as to which operators it is intended to cover
* The exemption process should not be a means of modifying the Standards
* Many parts of the exemption clearly relate to a single operator in one city, yet request a nation-wide and industry-wide exemption, making the exemption apply more broadly than required
* Many parts of the exemption are subject to milestone targets and thus already do not require full compliance
* The exemption applies to newly procured or upgraded vehicles and infrastructure, which can reasonably be expected to fully comply with the Standards
* The application contradicts other reports that state rail systems are generally compliant and have met targets

VCOSS states its preferred approach is for the Commission to decline the application, and invites individual operators apply for exemptions that are reasonable in their individual circumstances, while maintaining the integrity of the legislated Standards as having national, industry-wide application.

VCOSS also states that in the event that the Commission grants any exemption the following limitations or conditions should apply:

* Limit the exemption to specified operators
* Limit the application of exemptions for each element only to those operators who can provide evidence that they require the exemption
* Limit the exemption to apply only to infrastructure or conveyances constructed or purchased before the 2002 commencement of the Standards, and have not been substantially upgraded since.
* Limit the exemptions for each element to circumstances where the Standards had not previously been met, to prevent retrograde change
* Limit the exemption to the end of the current milestone target period
* Exclude elements subject to milestone targets where the applicant has only provided anecdotal evidence of difficulties, as this does not prevent current targets being reached
* Consider substituting a reduced milestone target for each operator rather than a full exemption where milestone targets apply and operators supply evidence that they cannot be reasonably achieved
* Ensure each element of the exemption is specifically limited to trains, trams, or both, and clarify the application of the exemption to multi-modal facilities
* Limit the exemption to circumstances where an operator can provide evidence that they have taken all reasonable steps to comply with the Standards, including investigating alternate solutions
* Limit the exemption to circumstances where all reasonable steps have been taken to notify customers that a particular piece of infrastructure or conveyance is not compliant with the Standards
* Place a condition on the exemption that customers who cannot use the transport as a result of the exemption are provided with an alternate transport option to reach their desired destination at an equivalent fare
* Apply the exemption only if the operator reports publicly every 12 months on the current level of compliance with the Standards (excluding any exemptions), and the progress achieved since the last report, including the percentage level of compliance for each element

### Mr Peter Kerley

Mr Kerley’s submission is principally concerned with the application of Hearing augmentation-listening systems clause 26.2.

Mr Kerley notes that AS 1428.2 was written at a time when hearing augmentation systems were in their infancy and that the reference to a 10% coverage area is out-dated.

Mr Kerley also provides a description of the technical requirements to achieve a quality hearing augmentation system including the need to reference an updated Australian Standard (AS 1428.5 Communication for people who are deaf or hearing impaired).

Mr Kerley notes that some operators are able to provide effective hearing augmentation systems and argues that if, on a case-by-case basis, any ARA member claims the need for an exemption they should make their data publicly and openly available for scrutiny.

### Australasian Railway Association Supplementary Submission to the Australian Human Rights Commission – Temporary Exemption Applications 14 August 2015

The ARA provided a supplementary submission to the Commission addressing a number of issues raised by public submissions and providing responses to a number of questions raised by the Commission in earlier correspondence.

The ARA stated that while its members support the spirit and intent of the DDA and subordinate instruments it is not possible using existing resources to upgrade all existing infrastructure to comply with the Transport Standards due to both the constraints of the existing infrastructure and the failure of the existing Standards to provide realistic specifications for rail operators to comply with.

Further, the ARA states that exemptions are used by the industry as legal protection where the industry is unable to fully comply with the requirements set out in the Transport and Premises Standards due to various reasons including infrastructure and engineering constraints or lack of government funding to upgrade rail services and facilities.

The position put forward by the ARA is that in seeking exemptions its members are not seeking to remove their responsibility to provide accessible transport. Rather, the exemptions provide its members with an opportunity to explore alternative solutions to ensure accessibility to its services, while working to upgrade rail services and facilities.

The ARA also proposes that without exemptions in place the associated higher costs of full compliance would result in fewer accessible stations on member networks.

The ARA submission points to the work that has commenced in updating and modernising the Transport Standards and provides information on the Rail Standards Working Group (RSWG) that has been established under the NAPTAC to progress this work. ARA reports that its members are participating fully in the RSWG and have committed to providing resources including secretariat support via the ARA, staff time and expertise as well as potential funding for any work that may be undertaken. The ARA anticipates that the work will be completed within 2.5 – 3 years.

The ARA anticipates the update process will result in the removal of or change to a number of requirements that are unachievable in the rail environment. In the short to medium term, however, the ARA argues its members will continue to benefit from legal protection through the exemption process.

The ARA submission responds to a number of general comments raised by public submissions from ACAA, All Aboard network, PWDA, VCOSS and the Deafness Council of NSW and provides some specific comment in relation to individual clauses under consideration[[2]](#footnote-2).

## Broad questions raised in submissions

A review of the submissions raises a number of broad questions that were also raised during the consultation over the original exemption granted in 2007.

First some submissions argue that many of the individual applications could be viewed as seeking to use the temporary exemption process to have an exemption granted to certify the existence of an anticipated unjustifiable hardship defence.

The Commission Guidelines on temporary exemptions states:

The Commission will consider whether it is appropriate to make an exemption subject to terms and conditions or to limit the application of an exemption to particular circumstances or activities.

In particular, the Commission will consider whether an exemption could be granted subject to terms and conditions which require action to be taken by the applicant during the term of the exemption that will:

* Reduce or remove, over time, the discriminatory practice or circumstance; and/or
* Further the objects of the Disability Discrimination Act.

Many of the current applications could be characterised as being concerned with seeking a long-term exemption from compliance with the current Transport Standards rather than a short-term exemption from compliance while work progresses towards compliance.

At the time of the original exemption application in 2006 ARA argued that where exemptions were applied for, the specifications in the Transport Standards for achieving compliance were either not capable of being complied with in a rail environment, and thus have to be interpreted by extensive and uncertain application of the unjustifiable hardship defense, or otherwise failed to give sufficient direction on actions required.

They argued that greater certainty of obligation in the terms sought would assist in making the large scale investments being incurred in new and refurbished conveyances and infrastructure to comply.

This issue was debated at length during the consultation period before the first exemption was granted. The Commission at that time viewed the application in broad terms as not being inconsistent with the Objects of the DDA.

The Commission’s 13 September 2006 consultation draft on recommendations noted:

The proposition put by PWD Australia - that an exemption application, or conditions on the grant of an exemption, in relation to the Disability Standards for Accessible Public Transport, must include specification of how an applicant will over time achieve compliance with the specifications in those Standards in their terms - goes further than is justified by the nature of the exemption power or by the Standards considered as a whole. Without the benefit of an exemption, the obligation to comply with the specifications in the Standards may nonetheless be modified by the capacity to comply by equivalent access or by limitations on the requirement to comply derived from the defence of unjustifiable hardship. The true limitation on whether an exemption should be granted is rather whether it would advance or be consistent with the objects of the DDA to do so[[3]](#footnote-3).

Secondly, some of the individual applications could be viewed as an attempt to re-write the Transport Standards in light of experience and more recent developments in building law.

If the two reviews of the Transport Standards that have already taken place had resulted in a revision of the technical compliance requirements it is possible that many of the issues raised in the current exemption application would have been resolved through the development of new standards.

This raises again the question of whether or not the Commission should grant exemptions that might be perceived as being re-writing the Transport Standards through the exemption application process.

The Commission’s 13 September 2006 consultation draft on recommendations noted this issue:

The Standards can only be amended by the Attorney-General remaking the Standards in amended form and submitting such amended Standards to the Parliament as provided for by the DDA. The Standards provide for the Attorney-General to review the Standards after their first five years in force, that is, at the end of 2007. Such a review once conducted may or may not lead to amendments to the Standards. The effect of a temporary exemption, however, may be to vary, for the period of the exemption, obligations arising from the Standards. The review of the Standards might also be informed by discussion of relevant issues during consideration of an exemption application by HREOC, and by the results of any research, consultation and reporting required during the period of and as a condition of granting an exemption.

Thirdly, by granting a broad exemption to all ARA members the Commission might effectively give permission to a service provider to not comply with the Standards when they could do so without onerous consequences.

I note the submission made by All Aboard network that stated:

Temporary exemptions that cover an entire industry may send the wrong signal to those members that are fulfilling their obligations under the DSAPT and providing good access. For example, an industry-wide five year temporary exemption from DSAPT Part 21.2 (2) may be used as a reason by a currently compliant operator to revert to discriminatory service booking practices.

The submission from the Victorian Council of Social Services (VCOSS) raises these and other related issues.

These broad questions are essentially ones for the Commission to consider as they raise legal and policy questions outside the scope of my advice.

My assessment and recommended approaches focus on the technical questions, anticipated effect and effective reporting requirements should any particular exemption be granted by the Commission.

### Addressing the need for ongoing exemption applications

The question of whether or not the Commission should continue to provide exemptions to the ARA is raised specifically by PWDA who state in their submission:

Many of the Exemptions sought are for features that by the ARA's admission have little prospect of being made compliant with the prescriptive (deemed-to-satisfy) requirements of either DSAPT or Premises Standards. Rather than seeking Exemption *ad infinitum* the ARA's members should seek solutions via Equivalent Access as per the provisions of the DSAPT (Clause 33.3) and Premises Standards (Section 3.2). Where an Equivalent access solution is not feasible Unjustifiable Hardship solutions become an option. Unjustifiable Hardship is, however, not an excuse to make little or no effort to improve non-compliant features, fixtures or facilities. Rather it involves improving the non-compliant asset to achieve maximum practicable accessibility and functionality given the constraints as per the requirements of DSAPT and the Premises Standards

Throughout their submission PWDA propose a condition of the exemption should be that a commitment be given by ARA members to find permanent solutions to the issues they have raised rather than year after year making application for exemptions.

PWDA proposes that this could be done either through the development of negotiated Equivalent access solutions on a site-specific basis or through reliance on unjustifiable hardship defences should compliance with the Standards not be possible.

In my view there are a number of individual applications currently under consideration that could have been addressed through changes to the Transport Standards if they had been updated as has been recommended by the first two reviews.

There is now a very real opportunity to address many of the issues subject to the current application following the commitment made by Government to commence a process for updating the Transport Standards in close consultation with industry, all levels of government and the disability sector.

This process has already begun with the establishment of the RSWG and it is intended that the updating will be completed by the middle of 2017, which is well before the end of the current exemption period proposed (late 2020).

This presents an opportunity to refer all the issues subject to the current application to the working groups that will be established to update the Transport Standards.

I am confident many of the issues in the current application will be effectively addressed through that process. For example, I would anticipate that revised Transport Standards would allow for some flexibility in the requirements for width of accessible paths of travel on existing rail platforms where there are significant structural elements present through the adoption of negotiated concessions.

The timetable for the Transport Standards update raises a question for the Commission about whether or not the current exemption period proposed by ARA of five years should be reduced to three years to better align with the update of the standards. The ARA submission also notes that it is anticipated that the work of the RSWG will be completed within 3 years[[4]](#footnote-4).

An alternative approach would be to write a ‘sunset’ clause into any exemption approved which would limit its application to the period up to the point at which revised Transport Standards were adopted.

In my view the update of the Transport Standards could address many, but not all of the issues subject to the current exemption application and there will be a need to consider long term solutions to addressing site-specific compliance difficulties either through Equivalent access approaches developed in consultation with service users and disability organisations or through reliance on unjustifiable hardship defences in the event of a complaint.

### General comment on recommended reporting requirements

Many of the conditions I have proposed be attached to any exemption that may be granted include reporting requirements for those ARA members that utilise the exemption and in some cases requirements for ARA to make reports available on their own website.

In the application ARA has provided information on earlier mechanisms for reporting on conditions attached to exemptions:

As previously noted in this application, the AHRC and ARA members agreed that the reporting to and consultation with the AHRC were to be carried out through the RISSB Code development process as the AHRC is a permanent observer of that process. Based on this understanding, the industry continued to provide updates to AHRC staff present at the Code development meetings over a period of 5 years. The ARA understands that the AHRC is satisfied with this arrangement as the AHRC has never directed the ARA or its members to consult with or report to the AHRC via different mechanisms.

I note the views expressed by All Aboard network on the issue of reporting:

It is our understanding that the ARA has been relying on the Commission’s observer status to the RISSB Code development process as an alternative to the required reporting. We believe that the Commission should require reporting “*by the member concerned*” so that more relevant information is obtained in a format that can be acted upon and distributed as necessary.

I also note the views of PWDA:

PWDA believes that a monitoring and reporting mechanism is essential for any exemptions granted. Without this mechanism as a condition most of the application cannot be supported. Several reporting models are available, but reporting regularly to the Australian Human Rights Commission (AHRC) and the National Accessible Public Transport Advisory Committee (NAPTAC) would be well received by PWDA.

While ARA has reported to the Commission through the RISSB Code development process in the past I do not consider this to be a sufficient reporting mechanism for the future for a number of reasons.

First as far as I am aware the RISSB Code development forum is not active and the Commission may need to consider its capacity to participate in similar processes in the future.

Secondly, the RISSB reporting mechanism did not provide interested stakeholders with publically available information about progress that was being made in relation to the issues subject to an exemption.

Thirdly, people with disability wishing to plan their journeys were not able to access information on which service providers were utilising the exemption or at which sites, in order make an assessment of the effect that would have on their journey.

The ARA supplementary submission[[5]](#footnote-5) recognises the value of providing location specific information:

The industry would be committed to a discussion of conditions to be imposed if the exemptions were granted, which may include readily made information to customers regarding specific locations to inform the most accessible journey.

Finally, the reporting mechanism did not provide a local or central database on the extent of use of the exemptions and progress being made to address any access restrictions that could be used during reviews of the Transport Standards.

As a result many of my recommendations propose a way to achieve a more transparent reporting mechanism to allow for ongoing monitoring by the public of efforts to improve access or record limitations.

This includes a recommendation in some cases that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

# Consideration of each application – Group 1

## 2.1 Access paths – Unhindered passage – Part 1

### Exemption sought

Part 1: Temporary exemption: rail premises and rail infrastructure

* For a period of five years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.

### Summary of submissions

**APTJC** support the application noting flange gaps are an essential element of level crossings to allow for unhindered passage of train wheels.

**All Aboard** network proposed that the ARA should not be granted any exemptions on behalf of its members, however, if the AHRC did grant any exemption it should be conditional on12 monthly reports on:

* measures taken to reduce the use of level crossings as part of access paths and
* research undertaken into possible technical solutions for bridging flange gaps.

The network also proposed that the report should be a formal report and should also be made available to the public via the ARA and the AHRC website.

**People with Disability Australia (PWDA)** acknowledged the difficulty in finding practical solutions to the issue of flange gaps and offered conditional support for the application.PWDAproposed that ARA members that have responsibility for stations that have pedestrian level crossings should within 12 months of the granting of any Exemption, submit to AHRC a Schedule of Works that details concrete milestones in the phase out and replacement of level crossings from the station access environment.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The issue of safety and flange gaps has been the subject of considerable research and policy discussion over many years both in Australia and internationally.

The safety issues affect both people with disability moving across level crossings and the trains themselves as operators are of the view that flange gaps cannot safely be reduced below 75mm.

This is a problem throughout Australia where level crossings form part of an access path and not limited to exceptional situations, however, it has been a particularly important issue in Victoria following a number of incidents and deaths arising from people who use wheelchairs being caught in flange gaps while using level crossings.

I note that considerable work has been undertaken to mitigate the effect of flange gaps and provide user information on crossing use and the Victorian Level Crossing Removal Program aims to remove 50 of the most dangerous and congested crossings over the next 8 years. <http://economicdevelopment.vic.gov.au/transport/major-projects/level-crossing-removal-project>

I also note that the USA*Guidelines for Pedestrian Facilities in the Public Right-of-Way* have adopted the following requirements after their own research into this issue:

**R302.7.4 Flangeway Gaps.** Flangeway gaps at pedestrian at-grade rail crossings **shall** **be** 64 mm (2.5 in) maximum on non-freight rail track and 75 mm (3 in) maximum on freight rail track.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision. A summary of those consultations between the rail sector, representatives of people with disability and the Commission was made publically available for comment prior to a final decision being made[[6]](#footnote-6).

I am of the view that the issues raised at the time of the original exemption application remain valid. People with disability experience difficulty and face potentially dangerous situations while negotiating level crossings and rail operators need to ensure safe operation of trains.

Some progress appears to have been made since the original application including work to improve passage at particularly difficult crossings, the provision of information and guidance to people with disability on the use of level crossings and in some cases the removal of level crossings.

Arguably this issue could be dealt with by the existing unjustifiable hardship provisions, however, if granted, a temporary exemption would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

In my view this issue could be addressed in the long-term through negotiated changes during the upcoming Government supported update of the Transport Standards. This view appears to be supported by the ARA which states in its supplementary submission on this matter that:

The industry recognises that exemptions are only temporary solutions therefore it is working closely with the Commonwealth Government and Disability sector representatives to modernise the standards[[7]](#footnote-7).

Ensuring the availability of information to service users on progress in relation to this issues was a feature of submissions.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism and maintain progress that has taken place to reduce the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.

This exemption is subject to the following conditions:

* any member of the ARA utilising this exemption provides a written report to the Commission and ARA within 12 months of this exemption and updated every 12 months on:
	+ action taken to improve safe use of level crossings where they form part of an access path
	+ progress made in the removal of level crossings, and
	+ any developments in research into possible technical solutions for bridging flange gaps.
* the ARA make such reports available to the public through its website.

## 2.1 Access paths – Unhindered passage – Part 2

### Exemption sought

Part 2: Temporary exemption: existing rail premises and existing rail infrastructure

* For a period of five years, an access path is required to provide entrance and exit only at a single boundary point for existing rail stations.

### Summary of submissions

**APTJC** support the application noting, the difficulty of achieving compliance in older stations with multiple pedestrian entrances.

**All Aboard** network proposed that the ARA should not be granted any exemptions on behalf of its members and noted that all new entrances and exits should be accessible.

**PWDA**, while acknowledging that not all entrances to existing rail stations could practicably be made accessible, proposed that compliant entrances and exits should be provided at the maximum number of locations practicable and not be confined to a single entrance/exit.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application identifies a number of reasons why this exemption is sought in relation to existing rail stations including:

* the costs associated with creating accessible paths of travel at multiple entry points for all stations requiring upgrade
* feasibility of creating accessible paths of travel due to land size and topographical limitations such as road widening and other developments that affect the railway corridor
* heritage questions, and
* the effect of more comprehensive upgrades of any one station on the pace of upgrades in relation to other stations.

Matters relating to cost, topography and space availability appear to raise question of unjustifiable hardship as would heritage questions where changes would significantly affect essential heritage features.

The proposed exemption appears to be seeking certainty for operators who would otherwise have to rely on an unjustifiable hardship defence if subject to a complaint.

There may, however, be some merit in granting an exemption where this might advance the objects of the DDA by allowing for resources to be available to improving access at other stations in a more timely way.

People with mobility disability who cannot use stairs or steep gradient passageways would be most affected by this proposed exemption.

While the existence of a single accessible entrance linked to all essential features would ensure a station is accessible to people with mobility disability the existence of other inaccessible entrances would reduce the amenity of the station and could result in significant barriers to use for some people.

For example, if a person who uses a wheelchair arrived at an inaccessible entrance and was required to travel considerable distances to find an accessible entrance, fatigue may significantly impact on use. I note that the Premises Standards regulate in this area by requiring an inaccessible entrance to a new building to be no more than 50m from an accessible entrance.

ARA states that its members have consulted with disability organisations and customers with disability and have developed a ‘primary path of travel’ approach ensuring connectivity of all facilities.

The ARA application identifies a number of features of the primary path of travel approach including (in part) that:

1. The accessible entrance leads to and from all accessible facilities such as a unisex accessible toilet or accessible parking.
2. The entry is well signposted and offers a seamless journey for customers with disability.
3. The accessible entrance connects to each platform and links to the assisted boarding point on a platform.
4. The accessible entrance is the primary station entrance/exit, and
5. Customers can obtain journey planning information about accessible pathways through station precincts through brochures, telephone information services and transport information websites.

It would be appropriate to capture these features as conditions in any exemption granted in order to ensure minimum impact on service users.

While the reasons put forward for the exemption may be valid for some ARA members in some instances in others it may be possible to ensure multiple entrances/exits are accessible without imposing unjustifiable hardship.

If an exemption is to be granted in relation to this issue I am of the view that the exemption should only be available in situations where providing access at multiple entrances would involve significant structural work or would not be feasible due to space, topographical or heritage reasons.

It is also important that operators make improvements to other entrances/exits where this would not involve significant resource allocation. For example, a second entrance to a rail station might be improved through the application of minimal-cost access features such as a handrail or the installation of TGSI.

This approach would not provide the certainty ARA members are seeking as it requires operators to make an assessment that may be challenged, however, I do not believe sufficient justification has been presented to allow for a broad exemption as proposed.

In my view this issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

Ensuring the availability of information to service users on stations where restrictions occurred was a feature of submissions.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, an access path is required to a minimum of one entrance and exit at a single boundary point for existing rail stations where providing access at each entrance would require significant structural building work or not be feasible due to space, topographical or heritage reasons subject to the following conditions:

* The primary station entrance/exit is an accessible entrance.
* An accessible entry is well signposted and directional signage, including the international symbol for access is provided at any inaccessible entry.
* An accessible entrance connects to each platform and all accessible facilities such as any unisex accessible toilet or accessible parking.
* Any inaccessible entrance is upgraded in relation to access features such as handrails, stairway nosings and TGSI where this would not involve significant structural work.
* Any ARA member utilising this exemption ensures that service users can obtain journey-planning information about accessible pathways through station precincts:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.
* Any ARA member utilising this exemption provides a written report to the Commission and ARA within 12 months of this decision on which rail stations have inaccessible entrances and that this report be updated every 12 months.
* The ARA make such reports available to the public through its website.

## 2.4 Access paths – Minimum unobstructed width

### Exemption sought

For a period of five years, for existing rail premises and existing rail infrastructure:

* where the 1200mm minimum unobstructed width for access paths cannot be met due to structural and technical constraints, an access path with a minimum unobstructed width of 1000mm may be provided;
* the 850mm minimum unobstructed width (applicable to doorways and gateways) is also permitted on access paths for the purposes of passing an obstruction limited to less than 800mm in length; and
* platform edge warning TGSIs are permitted to intrude into access paths.

### Summary of submissions

The majority of **APTJC** support this application noting that on many occasions full compliance can only be achieved through the resumption of surrounding property or complete reconstruction of a rail station. **APTJC** also noted that the Premises Standards allowed for a path of travel minimum of 1000mm width generally within the built environment.

One member of **APTJC** proposed that existing exemption conditions should be applied.

**All Aboard** network proposed that the ARA should not be granted any exemptions on behalf of its members; however, if the AHRC did grant any exemption it should be conditional on existing conditions being retained.

**All Aboard** noted that pathways of minimum 1200mm width are necessary for the safety of large numbers of people simultaneously moving in more than one direction and that wherever possible TGSI should not form part of an access path on a platform.

**PWDA** stated it could not fully support the application arguing that while the application referred to the availability station staff for assistance and guidance most rail stations were not staffed 24/7.

**PWDA** proposed that the maximum number of access paths linking essential elements of a station must offer the maximum practicable width and that rail operators and providers must also commit to signage and other wayfinding methods that identify the access paths and alternate routes around obstructions.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application identifies a number of situations in which full compliance with the minimum requirements for 1200mm width path of travel would result in significant technical and resource difficulties including:

* Platforms on existing stations are often built in cuttings and tend to be low, curved and narrow significantly towards either end.
* Obstacles along existing platforms are common, along with multiple entry/exit points, use of steps, rail crossings and/or steep ramps.
* Road widening and other development activities have significantly constrained the railway corridor in many locations.
* Rail corridor, land constraints and topography limit available space on platforms and on the concourses to house all of the necessary access elements.
* Platforms on heritage listed stations pose particular challenges - some heritage items, such as cast iron decorative columns or seating cannot be altered, resulting in protrusions into the access path width.

Matters relating to the design and construction of existing platforms, obstacles, road widening, topography and space availability appear to raise question of potential unjustifiable hardship, as would heritage questions where changes would significantly affect essential heritage features.

The proposed exemption appears to be seeking certainty for operators who would otherwise have to rely on an unjustifiable hardship defence if subject to a complaint as a result of non-compliance.

While no data is presented concerning the number of situations where the above factors are relevant I would anticipate them to be widespread.

The proposed exemption would potentially impact on people using particularly wide wheelchairs or scooters and may limit the amenity of people walking with the aid of an assistant or guide dog.

I note that the Premises Standards allow for a 1000mm width pathway throughout buildings and between buildings and for a 850mm clear opening at doorways. These dimensions are sufficient to allow for the vast majority of people with disability using mobility aids.

While noting the comments of All Aboard in relation to the movement of large numbers of people a reduction of path width to 1000mm, where necessary because of the existence of significant structural features or other limitations, is unlikely to result in a significant barrier to movement for mobility aid users in rail premises and infrastructure.

The ARA application states that operators work with user groups to minimise the impact of any reduced pathway width by giving precedence to achieving required widths on a primary path of travel through a station and through station staff providing assistance and information where feasible.

It is important that any exemption granted refers to significant structural, technical or heritage constraints to ensure the width of a path is not reduced in order to retain minor features such as waste bins or seating.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision. A summary of those consultations between the rail sector, representatives of people with disability and the Commission was made publically available for comment prior to a final decision being made.

I have considered that summary as part of my assessment and am of the view that the factors that led to the 2007 decision to grant an exemption with conditions are still valid and justify reaching the same decision now.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Standards.

Ensuring the availability of information to service users on stations where restrictions occurred assist them to identify areas of the station precinct that offer the greatest accessibility was a feature of submissions.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail premises and existing rail infrastructure:

* Where the 1200mm minimum unobstructed width for access paths cannot be met due to significant structural, technical or heritage constraints, an access path with a minimum unobstructed width of 1000mm may be provided;
* The 850mm minimum unobstructed width (applicable to doorways and gateways) is also permitted on access paths for the purposes of passing an obstruction limited to less than 800mm in length; and
* Platform edge warning TGSIs are permitted to intrude into access paths.

This exemption is subject to the following conditions:

* Where site constraints result in an access path with a minimum unobstructed width of 1000mm, and where site constraints require further intrusion of TGSIs into the access path such intrusion is the minimum required.
* Where restricted paths of travel exist due to constraints any ARA member utilising this exemption ensure that service users can obtain information about restricted paths of travel at any particular rail station or infrastructure;
	+ at the location of the restriction, and
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.
* Any ARA member utilising this exemption provide a written report to the Commission and ARA within 12 months of this decision on which rail stations have restricted paths of travel and that report be updated every 12 months.
* The ARA make such reports available to the public through its website.

## 2.6 Access paths – conveyances

### Exemption sought

For a period of five years for existing rail conveyance external doors, and for a period of five years for existing rail conveyance internal doors, the width of the access path may be reduced to a minimum of 760mm.

For a period of five years, access may be provided only by means of stairs to upper and lower decks of double deck existing rail cars.

For a period of five years, an access path is only required at a single door rather than all doors of existing rail conveyances.

### Summary of submissions

The majority of **APTJC** members support this application noting that on older trains, purchased before 2002 it is not feasible to widen doorways without impacting on the structural integrity of the carriage.

However, one member of APTJC while not supporting a revised exemption would provide support if existing conditions were reinstated.

**All Aboard** network recommended that if the Commission granted this temporary exemption, that the current conditions be continued and compliance monitored.

**All Aboard** network also specifically expressed concern about non-compliance of the existing exemption conditions by the Melbourne metropolitan rail operator that the network reported has been subject to discrimination complaints.

**PWDA** proposed that it could not support the application without ARA members committing to informing customers of on-board access path constraints and providing assistance when required.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application identifies a number of limitations to meeting the compliance requirements in relation to existing rollingstock and infrastructure including platforms.

Difficulties include:

* the need to retain the structural integrity of older carriages
* constraints in relation to space available in narrow gauge carriages
* the need to balance the dimensions along access paths with circulation space associated with features such as accessible toilet facilities
* in relation to boarding points, problems associated with older rail stations where engineering constraints and the need for carriage/platform clearances for safety apply, and
* difficulties in deploying manual boarding ramps at each carriage door given timetabling requirements and guard capabilities.

The difficulties identified appear to raise question of potential unjustifiable hardship and the proposed exemption appears to be seeking certainty for operators who would otherwise have to rely on an unjustifiable hardship defence if subject to a complaint as a result of non-compliance.

While no data is presented concerning the number of situations where the above difficulties are relevant I would anticipate them to be widespread, particularly in relation to existing conveyances and narrow gauge rail.

The proposed exemption would potentially impact on people using wide wheelchairs outside the 80th percentile footprint range of 740mm or scooters and may limit the amenity of people walking with the aid of an assistant or guide dog.

The ARA application states that operators work with user groups to minimise the impact of any restrictions by providing direct assistance where feasible, by giving precedence to achieving functional accessibility outcomes in relation to key access features and on focussing on a primary path of travel through trains.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision.

A summary of those consultations[[8]](#footnote-8) between the rail sector, representatives of people with disability and the Commission was made publically available for comment prior to a final decision being made.

In that summary the Commission stated:

At the 6 April 2006 forum ARA presented strong arguments that doors of existing rollingstock cannot generally be widened without compromising the structural strength and thus crashworthiness of carriages. It appears appropriate to grant a temporary exemption on this point for existing carriages only, subject to a condition requiring direct assistance to help passengers negotiate the narrower doors where necessary.

The Commission also concluded at that time:

If *unavoidable* design constraints in fact dictate a maximum achievable clear access path of 760 mm it is hard to see that there is any diminution of existing substantive legal rights in saying so by way of exemption – since an unjustifiable hardship defence ought to succeed. An exemption granted only in respect of situations where unavoidable design constraints exist would not provide any protection where a reduced access path was provided as a matter of less constrained design choice.

I have considered that summary as part of my assessment and am of the view that the factors that led to the 2007 decision to grant an exemption with conditions are still valid and justify reaching the same decision now.

In relation to access to the upper levels of double deck rail cars in my view a complaint of discrimination is unlikely to succeed on the grounds of unjustifiable hardship so long as any allocated spaces or unique features can be accessed on a single deck. As a result it is unlikely an exemption would result in a diminution of rights but would provide a degree of certainty sought.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

Ensuring the availability of information to service users on services where restrictions occurred would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years for existing rail conveyance external doors, and for a period of five years for existing rail conveyance internal doors, the width of the access path may be reduced up to a minimum of 760mm where unavoidable design constraints and/or safety issues limit capacity to comply subject to the following conditions:

* direct assistance is available;
* any ARA member utilising this exemption ensures that information is available to passengers in advance of travel of instances where there are restricted paths of travel on particular conveyances:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.

For a period of five years, access may be provided only by means of stairs to upper and lower decks of double deck existing rail cars, subject to the condition that access to unique facilities is assured.

For a period of five years, an access path is only required at a single door rather than all doors of existing rail conveyances, subject to the following conditions:

* equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
	+ if an allocated space is not available;
	+ to ensure access to unique facilities; or
	+ to ensure a passenger can both board and alight the rail conveyance; and
* any ARA member utilising this exemption reports to the Commission within 12 months of this exemption on measures taken to ensure that staff and passengers are adequately informed of both the access paths available at the doors of existing rail conveyances and the equivalent access measures available, and
* the ARA make such reports available to the public through its website.

## 3.1 Circulation space for wheelchairs to turn in

### Exemption sought

For a period of five years, a manoeuvring area in existing rail premises and existing rail infrastructure complying only with the lower end of the range of dimensions stated in AS1428.2 (1992) Clause 6.2 is permitted, to the extent that space constraints do not permit a larger manoeuvring area.

### Summary of submissions

**APTJC** support the application noting that existing stations are constrained environments and in particular in relation to where lifts are located on a platform.

**APTJC** also refers to the fact that generally circulation space requirements in the Premises Standards, other than in Part H2 that covers rail stations, allow for a number of options for 60-90 degree and 30-60 degree turns.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored (note: there were no conditions attached to this exemption).

**PWDA** proposed that any exemption should be worded in a way that ensured the ‘lower end of the range of dimensions’ should be exceeded wherever practicable.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that larger circulation spaces are often not achievable due to the constraints of existing platforms, track alignment, narrow rail corridors and surrounding infrastructure.

While this may be true, despite the fact that the AHRC previously granted an exemption in relation to this matter, I do not consider the exemption to be necessary.

While the **APTJC** refers to circulation space requirements for 60-90 degree and 30-60 degree turns in relation to buildings more generally, the application from ARA does not seek to include these circulation space requirements. The ARA application is limited to an exemption to allow for use of the ‘lower range’ requirements of AS 1428.2 clause 6.2.

AS1428.2 clause 6.2 does not include a ‘lower range’ it requires a maneuvering space of 2070mm long by 1540mm wide for a 180 degree turn and then has a Note saying 2270mm x 1740mm is ‘preferred’.

Notes are advisory in Australian Standards and not mandatory so the mandatory provisions of the Transport Standards in this situation can be satisfied by providing a circulation space for a 180 degree turn of 2070mm x 1540mm.

If it assumed the ARA application seeks authority to use these ‘lower range’ circulation space requirements of 2070mm long by 1540mm wide in situations where the ‘preferred’ requirements of 2270mm x 1740mm cannot be met there is no question of non-compliance with the Transport Standards.

The Transport Standards are silent on circulation space requirements for a 60-90 degree and 30-60 degree turn and in my view it would be reasonable for an operator to apply the circulation space requirements found in AS 1428.1:2009 clause 6.5 for turns of this type as providing Equivalent access.

### Recommended approach

The Commission declines to grant ARA’s application for a temporary exemption in relation to Part 3.1. In my view that the ARA does not require an exemption in order to apply the circulation space requirements in AS1428.2 (1992) Clause 6.2 of 2070mm long by 1540mm wide in situations where the ‘preferred’ requirements of 2270mm x 1740mm cannot be met.

If ARA members are seeking to have the Transport Standards refer to the options for circulation space requirements for a 60-90 degree and 30-60 degree turn as found in AS 1428.1:2009 clause 6.5 this is a matter that should be raised during the upcoming technical update of the Transport Standards.

## 4.2 Passing areas - Two-way access paths and aerobridges

### Exemption sought

For a period of five years, for existing rail platforms a passing area every 9 metres along any two-way access path that is less than 1800mm wide is permitted.

### Summary of submissions

**APTJC** supports this application, however, its submission incorrectly refers to the Premises Standards requiring passing spaces every 9m (the requirement is for passing spaces every 20m where a direct line of site is not available).

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored.

**PWDA** proposed that if the exemption is approved it should retain the reporting requirement of the current exemption.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application identifies a number of reasons for granting an exemption:

* Increasing the distance required between passing areas from 6m to 9m acknowledges the limitations on existing platforms due to track alignment, narrow rail corridors and surrounding infrastructure
* Existing legacy buildings and surrounding grounds, some of which are heritage listed, increase the challenge and complexity of compliance with 6m.
* Increasing passing areas requirements to every 9 metres would be consistent with the requirements of the Premises Standards.

The difficulties identified appear to raise question of potential unjustifiable hardship and the proposed exemption appears to be seeking certainty for operators who would otherwise have to rely on an unjustifiable hardship defence if subject to a complaint as a result of non-compliance.

The reference to the requirements of the Premises Standards appears to be essentially a desire to rewrite the Transport Standards to harmonise with the Premises Standards.

The application provides no data on the scale of the difficulty in achieving compliance with the 6m requirements or the number of situations where increasing the requirement to 9m would resolve the difficulties identified.

The application states that ARA members try to achieve passing spaces every 6m on upgraded stations and where feasible would make direct assistance available to someone who might experience difficulty as a result of the non-compliance.

The reference to a 9m passing space requirement in the Premises Standards is not correct.

The Premises Standards require a passing space every 20m along an access path where it is not possible to see the length of the pathway.

Harmonising with the Premises Standards, therefore, would require an exemption allowing for a passing space every 20m.

I note, however, railway platforms and associated areas are unusual amongst premises, both in constraints on available space and in their intense level of crowding at some times and a 20m requirement may not be appropriate.

The consequence of extending the requirements for passing spaces where a two-way access path is less than 1800mm from 6m to 9m would be that in the event two wheelchair users (or people with a guide dog or assistant) or a wheelchair user and another person needed to pass one person would need to reverse for a maximum of 4.5m as distinct to 3m.

In situations where the requirement for passing spaces every 6m cannot be met on existing platforms without significant structural changes and associated costs I believe it would be reasonable to allow for a 9m distance between passing spaces.

A reference to structural or heritage constraints in any exemption would assist in ensuring the exemption was not utilised in situations where it would be easy to remove a feature such as a refuse bin, vending machine or seat.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

Ensuring the availability of information to service users on existing platforms where passing area restrictions occurred would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail platforms where structural or heritage constraints exist a passing area every 9 metres along any two-way access path that is less than 1800mm wide is permitted. This exemption is subject to the condition that

* any ARA member utilising this exemption provide a written report to the Commission and ARA within 12 months of this decision on which rail station platforms do not provide passing spaces every 6m where any two-way access path is less than 1800mm wide and that report be updated every 12 months including any measures taken by the ARA member to address any impacts this may have on users.
* the ARA make such reports available to the public through its website.

## 5.1 Resting points - When resting points must be provided

### Exemption sought

For a period of five years, compliance with clause 5.1 is not required for existing rail premises and existing rail infrastructure to the extent that site constraints prevent compliance (rather than only add expense or difficulty).

### Summary of submissions

**APTJC** supports this application noting concerns of available space in some locations and possible safety issues arising from compliance.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored.

**PWDA** proposed that if the exemption is approved it should retain the reporting requirement of the current exemption and that functional solutions mentioned in the ARA application might be among those considered on a case-by-case basis in consultation with service users and others.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

**Comment**:

The ARA application claims that the requirement for resting points along an access path every 60m is impractical particularly in the existing rail environment and that decisions to not install seating has been influenced by issues such as security and safety concerns and impacts on customer movements. The application refers to underground tunnels with high passenger flows as an example of where it is not practical to provide seating.

Non-compliance with this requirement would affect those people with disability who experience fatigue or who have a mobility disability that limits capacity to walk long distances, however, I would anticipate its affect would be minimal in the vast majority of rail settings where compliance could be easily achieved.

I note that this issue is only likely to affect a few rail stations where circumstances limit the capacity to install seating due to existing infrastructure constraints and that the exemption will only apply where such constraints exist.

In such situations the ARA has stated that its members have or will consult with service users to identify functional and practical alternatives which include resting points being provided at key locations where customers are likely to require this facility such as station platforms, station entrances, bus stops, drop-off points and where station topography may be difficult for customers to traverse.

Arguably the approach described that focuses on a primary path of travel where resting points are located at key points could be considered to be an effective Equivalent access approach, however, the ARA is seeking greater surety for members through this application.

Granting an exemption with conditions would guarantee limited use of the exemption and consultation with users to ensure the most effective use of resting points, which is consistent with the objects of the Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

Ensuring the availability of information to service users on the location of resting points would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, compliance with clause 5.1 is not required for existing rail premises and existing rail infrastructure to the extent that site constraints prevent compliance (rather than only add expense or difficulty). This exemption is subject to the condition that:

* any ARA member utilising the exemption consults with local user groups to identify key locations where it is anticipated that customers will be waiting or require rest
* any ARA member utilising the exemption provide a report to the Commission and the ARA on the outcome of consultations and location of any non-compliance
* the ARA make such reports available to the public through its website.

## 6.4 Slope of external boarding ramps

### Exemption sought

Where the slope of an external board ramp is greater than 1 in 8, ARA operators are not required to provide staff assistance in ascending or descending the ramp

### Summary of submissions

The majority of **APTJC** members support this application noting that some ARA members have reported thatcompliance with the Transport Standards has led to instances where passenger safety, vehicle standards, occupational health and safety, and workplace practices have been compromised.

One member of **APTJC** would provide support the application if existing conditions were reinstated.

**All Aboard** network does not support a temporary exemption from Part 6.4 arguing that in the 13 years since the introduction of the DSAPT and 8 years since the 2007 exemptions were granted, sufficient progress should have been made such that instances where the slope of a boarding ramp is greater than 1 in 8 should have been eliminated.

**PWDA** proposed that if the exemption is approved it should retain the reporting requirement of the current exemption to ensure customers are able to plan their travel arrangements accordingly.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

ARA members have raised concerns regarding occupational health and safety risks presented by staff pushing passengers' wheelchairs or scooters up ramps at slopes at or approaching 1 in 4, which the Transport Standards permits as a means of compliance with requirements for accessible boarding.

ARA claims that progress is being achieved in reducing the number of rail stations where the gradient of a boarding ramp causes difficulty due to the relationship between the platform and rail carriage. The ARA states that improvements in this area have been assisted by the concessions available through the exemption provided under 8.2 of the Transport Standards concerning nominated boarding points.

The issue of staff health and safety identified raise a question of potential unjustifiable hardship and the proposed exemption appears to be seeking certainty for operators who would otherwise have to rely on an unjustifiable hardship defence if subject to a complaint as a result of non-compliance.

This raises complex questions about the relationship between the Transport Standards and legislation such as the Workplace Health and Safety Actthat imposes duty of care obligations on employers to ensure ‘so far as is reasonably practicable’ the health and safety of their staff.

The application provides no data on the scale of the difficulty in achieving compliance with the requirement to provide direct assistance so it is difficult to assess the impact it would have on people who use wheelchairs or other mobility aids.

This issue was first raised in the original 2007 exemption, but a decision was deferred while further discussions took place between operators, the Commission, representatives from the disability community and other interested parties.

A number of meetings took place during 2007 and in November 2007 the Commission granted an exemption with conditions.

While progress is being made in relation to addressing boarding points for trains I am of the view that the factors that led to the 2007 decision to grant an exemption with conditions are still valid and justify reaching the same decision now.

Having said that I note that it is arguable that 6.4(c) does not actually require the operator to provide assistance, but merely states that a boarding ramp between 1 in 4 and 1 in 8 is permissible when assisted access is available.

I note that the ARA application refers to the fact that some members operate the Companion Card program that would provide for free travel for someone accompanying a person with disability who requires assistance with boarding. I propose that any exemption granted be conditional on any operator utilizing the exemption offer free travel to any assistant required to assist with boarding as a result on non-compliance.

ARA has reported that its members provide information advising which of their stations are accessible through media channels such as websites, apps and journey planners and it therefore should be reasonable to expect they also provide information on where the slope of the external boarding ramp is greater than 1 in 8 and where assistance would not be available.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of a location specific Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, where the relationship between the platform and rail carriage means that an external board ramp can only be provided at a gradient greater than 1 in 8 and less than1 in 4, ARA members are not required to provide staff assistance in ascending or descending the ramp.

This exemption is granted on the condition that

* any ARA member utilising this exemption provide a report to the Commission and ARA within 12 months of this decision on:
	+ the number of locations where boarding ramp slopes of 1 in 8 or better cannot currently be achieved;
	+ measures to be taken to increase the number of locations where external boarding ramp slopes of 1 in 8 or better will be achieved;
	+ results of examination by the operator of alternative methods for achieving accessible boarding, and
	+ that the report be updated every 12 months.
* the ARA make the report available on their website.
* any ARA member utilising this exemption ensure that service users can obtain information about restricted access at any particular rail station or infrastructure;
	+ at the location of the restriction, and
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.
* any ARA member utilising this exemption provide free travel for any assistant accompanying a person with disability who requires assistance boarding a train as a result of non-compliance with clause 6.4.

## 8.2 Boarding - When boarding devices must be provided

### Exemption sought

For a period of five years a manual or power assisted boarding device is only required at a nominated single door rather than all doors of a rail conveyance.

### Summary of submissions

The majority of **APTJC** members support this application noting that a critical factor affecting the ability of operators to provide access at all doors on a conveyance is the variation in vertical and horizontal gaps at many existing rail stations. APTJC supports the view that a coordinated identifiable central location for passengers and staff to provide boarding assistance is essential in providing access to rail services for customers who are unable to negotiate the horizontal and/or vertical gaps

One member of **APTJC** would provide support the application if existing conditions were reinstated.

**All Aboard** network disputes the justifications put forward by ARA on behalf of its members and reports on feedback the network has received indicating that operators in Melbourne have not been complying with the 2007 conditions of exemption.

**All Aboard** also argues, for example, that requiring wheelchair users at some rail stations to travel significant distances from the station entry to a designated boarding point at the front of a train does not constitute Equivalent access.

**All Aboard** proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored.

**All Aboard** specifically requests that the Commission take a proactive role in ensuring that all conditions to temporary exemptions are met.

**PWDA** raised concerns about the application of the exemption in situations where the number of allocated spaces for a train could not be accommodated in one car and in situations where there might be significant barriers from the nominated car to a rail station entrance/exit.

**PWDA** proposed that a strategy should be included in any exemption to address these difficulties through the adoption of conditions.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

ARA members have submitted that their ability to provide access to each rail car is affected by a number of factors including:

* variations in existing infrastructure that that results in differing vertical and horizontal gaps necessitating the use of boarding ramps
* variations in passenger and freight rollingstock, track curves, track cants, safety clearance requirements and maintenance tolerances
* difficulties in deploying the manual boarding ramp at each railcar door given platform obstacles, timetable requirements and railway staff capabilities.

The application claims that operators have trialled a number of engineering solutions, such as, rubber fillers attached to the rail side of the platform, sacrificial strips attached to the rail car and hydraulic ramps, but that none have proven to be fully reliable in providing access for people with disabilities.

As a result ARA members it appears that ARA members are proposing that compliance with the vertical and horizontal gap requirements cannot be achieved without causing unjustifiable hardship and as a result a boarding device would need to be deployed at most railcars.

The application also claims that it not possible to deploy the manual boarding ramp at each railcar door given platform obstacles/infrastructure, timetable requirements and railway staff capabilities.

ARA has argued that by restricting the number of assisted boarding points a clear line of sight between staff and the customer needing assistance is maintained.

The proposed exemption appears for be attempt to validate an alternative approach to providing access through Equivalent access.

Any exemption granted would affect people who use wheelchairs or other mobility aids as they would be required to locate and travel to any designated boarding point. If all allocated spaces in the carriage at the boarding point were occupied it would be necessary to provide for an alternative boarding point to another carriage. This issue could be addressed by applying similar conditions to the original exemption granted in 2007.

I have considered the issues raised by ARA and the material provided as Attachment 2 of the application (CRC for Rail Innovation, Platform–train interface for rail passengers – a technology review (2012)) and in my view the factors that led to the 2007 decision to grant an exemption with conditions are still valid and justify reaching the same decision now.

It would appear that this application highlights a continuing problem that operators face in relation to compliance with clause 8.2 and this issue should be referred to the relevant working group established under the upcoming Government supported update of the Transport Standards to negotiate long-term solutions.

Ensuring the availability of information to service users on the location of specified boarding points, where required, would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of a location specific Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance, subject to the following conditions:

* equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
	+ if an allocated space is not available; or
	+ to ensure access to unique facilities; or
	+ to ensure a passenger can both board and alight the rail conveyance from the station entrance/exit
* any ARA member utilising the exemption provides a report to the Commission and ARA within 12 months of this decision on measures taken to ensure that staff and passengers are adequately informed of both the doors of rail conveyances at which boarding devices are available and the equivalent access measures available
* that the report be updated every 12 months, and
* any ARA member utilising this exemption ensure that service users can obtain information about specified boarding points at any particular rail station or infrastructure;
	+ at any platform at which there is a specified boarding point,
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.
* that ARA make the report available on their website.

## 8.7 Boarding - Signals requesting use of boarding device

### Exemption sought

For a period of five years, signals for requesting boarding devices may be located in or within reach from, rather than only in, allocated spaces on rail conveyances.

### Summary of submissions

**APTJC** supports this application noting that locating signals requesting use of a boarding device in an allocated space may not be possible in some older rail cars.

**All Aboard** network acknowledges that in the public transport environment, and in particular where fold-up seats are used, that signalling buttons may need to be located in a position other than as specified.

**All Aboard**, however, questions the clarity of the ARA statements in support of this application and the assumptions made about the times that people with disability need to travel.

**PWDA** supported the application on the condition that rail operators and providers seek permanent solutions under Equivalent Access and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that design and wall space constraints mean that on occasion it is not possible to meet the locational requirements for call buttons as specified in AS 1428.2 clause 11.4. This clause requires the button to be within 900mm and 1100mm above the finished floor.

AS 1428.2, however, also includes a side reach range specification for people using wheelchairs in clause 22.2 that indicates a reach range of between 230mm and 1350mm. Part 8.7(2) of the Transport Standards appears to allow for some flexibility in the location of the button in that it requires compliance with AS 1428.2 ‘If possible’.

Given these factors and the limits of the exemption to requiring the location of the button within reach of someone occupying an allocated space it is likely the effect of the exemption on transport users will be minimal.

By ensuring the call button is in or within reach of people in allocated spaces I am of the view that operators would be essentially meeting the performance intent of clause 8.7 through providing Equivalent access and therefore the need for an exemption is questionable.

However, in my view the granting of an exemption in the form proposed will not diminish existing rights and would provide clarity for operators.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, signals for requesting boarding devices may be located in or within reach from, rather than only in, allocated spaces on rail conveyances.

## 11.2 Handrails and grabrails - Handrails to be provided on access paths

### Exemption sought

For a period of five years, rail platforms are exempt from clause 11.2.

### Summary of submissions

**APTJC** supports this application noting the practical difficulty in providing handrails along rail platforms and the possible restriction on already congested access paths.

**All Aboard** network does not support the application arguing that it can be reasonably anticipated where handrails are likely to be required without them becoming a hazard.

**PWDA** broadly supports the application, however, proposes that handrails be provided on platforms in response to publically expressed need. PWDA provides an example where a handrail at a specific point might be of significant assistance if other factors prevents the installation of seats.

**PWDA** also proposes that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application argues that it is not possible to anticipate the level of additional support or passive guidance needed by customers along an access path and that the full application of this requirement on railway infrastructure may adversely affect customer flows, reducing the width of access paths and preventing seating from being placed along the building shoreline.

Clause 11.2 is a performance statement that relies on an operator making judgments and ARA members are concerned that the clause could be interpreted as requiring handrails, for example, along the full length of a platform or even along the full length of an access path from the property boundary to a boarding point.

The application appears to be an attempt to limit the effect of clause 11.2 by clarifying it does not apply in situations where the requirement might cause particular difficulties for customer flows or access path widths.

I note that the Premises Standards does not require handrails or grabrails along an access path other than specified on ramps, stairways and in lifts.

The exemption if granted would affect those people who would normally benefit from the provision of a handrail for additional support and those who might use a handrail to assist in passive guidance including people who are blind. The scope of coverage for the exemption, however, would be limited to the actual platform and not include the path of travel along and ramp, stairway or walkway beyond the platform.

In my view the effect on customers would be minimal as platforms are level there are other features that assist with support and guidance including seating and TGSI. Having said that I would recommend a condition by applied to the exemption to allow individual service users to request the installation of a handrail at specific points on a platform where this would not cause difficulty for the operator.

This issue could be addressed in the long-term, both in relation to platforms and the broader rail environment, through revisions to the clause following the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, rail platforms are exempt from clause 11.2 subject to the following condition:

* Where an ARA member receives a request for the installation of a handrail at a specific point on a platform installation will be undertaken unless the operator is of the view that installing a handrail will adversely affect customer flows, reduce the width of access paths or prevent seating from being placed along the building shoreline or affect safety.
* Where a request is made but the installation of a handrail does not proceed the ARA member concerned will provide a report on the request and the reasons for not taking action to the Commission and publish the report on the ARA members website.

## 12.2 Doorways and doors - Compliance with Australian Standard — premises and infrastructure

### Exemption sought

For a period of five years, existing doorways and doors on existing rail platforms are exempt from clause 12.2.

### Summary of submissions

The majority of **APTJC** members supported the application, however, one member sought further information on the claim that it has been difficult to source doors that can meet the requirements of AS 1428.2.

**All Aboard** network proposes that if the exemption is granted any conditions to the current exemption be retained and compliance monitored.

**PWDA** supports the application on condition that doors meet the current Premises Standards requirements in relation to force of 20N and that progress in relation to initiatives described in the application involving automatic door openers and door design that balances access and security needs be reported on annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application specifically refers to doors at unisex accessible toilets and in particular in relation to the force required to open, swing and hold the door open.

It appears the application raises questions of unjustifiable hardship on the basis that the requirement cannot technically be complied with for manually operated doors.

Clause 12.2 of the Transport Standards states that doors and doorways must comply with AS 1428.2 (1992) clause 11 (except for clause 11.5.2).

AS 1428.2 clause 11 refers to a number of features of doorways and doors including clear openings, circulation space and door controls.

AS1428.2 clause 11.6.3 references clause 23 in relation to controls and this clause in turn references AS 1428.1:2001.

Clause 11.1.1 of AS 1428.1:2001 (not clause 13.5.2 as stated in the ARA application) requires that a force of no more than 19.5N is required to initially open the door, 6N to swing the door and 7.5N to hold the door open between 60 and 90 degrees

During the development of the Premises Standards and revised BCA there was broad agreement between the building and disability sectors that the requirements of AS 1428.1:2001 in relation to door opening forces could not be consistently met for manually opened doors.

As a result agreement was reached to apply a consistent requirement for 20N force as required under AS 1428.1:2009 clause 13.5.2(e).

An exemption in relation to door opening forces including a requirement that doorways and doors comply with current Premises Standards and BCA in relation to this matter would reflect the accepted compliance requirements in this area.

An exemption from the whole of clause 12.2 would, however, mean an exemption from any of the requirements of AS 1428.2 clause 11 and the ARA application does not put forward any evidence as to why such a broad exemption is needed.

Unless ARA comes forward with additional information or justification for a broad exemption in this area I recommend the exemption be limited to door opening forces.

This issue could be addressed in the long-term, both in relation to platforms and the broader rail environment, through revisions to the clause following the upcoming Government supported update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, existing doorways and doors on existing rail platforms are exempt from the requirements of AS 1428.1:2001 clause 11.1.1, subject to the condition that the doorways and doors comply with AS 1428.1:2009 clause 13.5.2(e).

## 12.4 Clear opening of doorways

### Exemption sought

For a period of five years, where design constraints prevent installation of toilet doors on rail conveyances with an opening width of 850mm, a reduction in toilet door opening width from 850mm to 760mm on rail conveyances is permitted.

### Summary of submissions

**APTJC** supports the application noting the difficulty in meeting requirements on existing conveyances and that the proposed requirements are consistent with European standard.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained.

**PWDA** support the application on condition that rather than ARA members continually apply for exemptions, permanent site-specific solutions be sought to find suitable Equivalent access approaches or rely on unjustifiable hardship defences.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application specifically refers the difficulty in achieving compliance with this requirement for operators constrained by narrow gauge railway tracks where achieving compliance might affect the structural integrity and crash worthiness of the conveyance.

The application essential proposes that a requirement to meet the 850mm clear door opening in some conveyances would result in unjustifiable hardship because of the effect on the structural integrity of conveyances.

Arguably this issue should be covered by the existing unjustifiable hardship provisions in the even of a complaint arising from non-compliance, however, if granted a temporary exemption would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

The application acknowledges that a reduced clear door opening may not permit people using larger mobility aids to access toilet facilities and that customers may need to transfer into an on-board operator-supplied wheelchair.

Where design constraints result in a reduction in clear door openings it would be reasonable to require operators make available an on-board wheelchair suitable for use in situations where there is restricted access.

I note the ARA application reports on member consultation with service users on how to minimise the impact through focussing on the primary path of travel approach to ensuring connectivity of essential services and facilities.

As the application only refers to this as being an issue for narrow gauge rail operators I recommend any exemption granted specifically refer to narrow gauge in order to minimise use of the exemption to where it is necessary because of structural constraints.

In order to minimise the impact of any restriction on service users I also recommend a condition that operators utilising the exemption provide information to service users to assist in their journey planning

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, where design constraints arising from narrow gauge rail tracks prevent installation of toilet doors on rail conveyances with an opening width of 850mm, a reduction in toilet door opening width from 850mm to 760mm on rail conveyances is permitted subject to the following conditions:

* Any ARA member utilising this exemption make available an on-board narrow wheelchair that can pass through a reduced clear door opening if required
* Any ARA member utilising this exemption ensures that service users can obtain journey-planning information about reduced door opening widths:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available.

## 14.3 Stairs - Compliance with Australian Standards — conveyances

### Exemption sought

For a period of five years, stairs on rail conveyances are exempt from clause 14.3.

### Summary of submissions

**APTJC** supports the application referring to the difficulty operators would have implementing wider stair widths without significantly reducing the available seating in both the upper and lower decks.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and monitored.

**PWDA** supported the application on the condition that rail operators and providers seek permanent solutions under Equivalent Access and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application refers to two specific issues in relation to compliance requirements for stairs in conveyances including:

* width of stairway (min 850mm) and effect of this requirement on the seating capacity of conveyances
* the requirement for opaque risers on retractable steps at carriage doors.

The ARA application claims that meeting the requirements for stairway width could result in 20%-25% reduction of seating capacity which would have a detrimental effect on general service users and that a requirement for opaque risers on retractable steps at carriage doors would not allow the proper mechanical operation.

It would appear that on both these issues the ARA application raises questions of possible unjustifiable hardship.

Arguably this issue should be covered by the existing unjustifiable hardship provisions in the event of a complaint as a result of non-compliance, however, would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

Any exemption would affect those service users moving between decks, however, I note that some service users would find benefit in narrower stairways as this would allow for use of both handrails. People with low vision, those using walking sticks and those with guide dogs may experience some difficulty negotiating steps with open risers, however, I note that the ARA application refers to the availability of staff assistance for customers who find it difficult to negotiate the steps.

Part 14.3 of the Transport Standards includes, by reference to AS 1428.1, requirements that the stairs:

* Shall not encroach into circulation space
* Shall have opaque risers
* Shall have a strip not less than 50mm and not greater than 75mm on each tread nosing with a minimum luminance contrast of 30%

It also requires steps have a minimum width of 850mm and that steps must have a maximum and minimum riser and tread as shown in Figure 8 of AS 1428.2.

A broad exemption from all these requirements does not appear to be warranted, as the application appears to only express compliance concerns about some aspects of these requirements.

The exemption recommended therefore is restricted to those specific issues identified in the application.

I also recommend reference to the availability of staff assistance be made a condition of the exemption at any steps at the entry to a carriage in order to limit the possible effect of the exemption.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, stairs on rail conveyances are exempt from the requirements of clause 14.3 in relation to:

* the minimum width of stairs, and
* the requirement for opaque risers on retractable steps at carriage doors subject to the operator making staff assistance available on request.

## 15.2 Toilets - Location of accessible toilets

### Exemption sought

For a period of five years, for existing rail premises and existing rail infrastructure accessible toilets are not required to be in the same location as other toilets.

### Summary of submissions

**APTJC** supports this application noting that it is not always possible to find space for accessible toilets at the same location as existing toilets, particularly in heritage buildings.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and monitored.

**PWDA** supported the application on the condition that rail operators and providers seek permanent solutions under Equivalent Access and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that the location of accessible toilets will be dictated by space limitations at existing stations and that the layout and construction of older stations (including those with heritage status) place limitations on the position of accessible toilets.

It would appear that the ARA application raises questions of possible unjustifiable hardship in relation to the position of accessible toilets on existing premises and infrastructure where there is limited space and possible heritage issues.

Arguably such situations could be covered by the existing unjustifiable hardship provisions in the event of a complaint being made due to non-compliance, however, if granted a temporary exemption would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

If accessible toilets are located as close as possible to other toilets, are on an accessible path of travel that links to other accessible features of the rail premises and are well signposted I would anticipate the exemption would have minimal effect on service users.

The recommendation seeks to limit the use of the exemption to situations where it is necessary because of site limitations.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail premises and existing rail infrastructure accessible unisex toilets are not required to be in the same location as other toilets where space limitations or essential heritage considerations mean co-location is not feasible, subject to the following conditions:

* the accessible unisex toilet is located on an accessible path of travel that links to other accessible features as close as possible to the other toilets
* directional signage, including the international symbol for access, is provided at the other toilets identifying where the accessible toilet is located
* any ARA member who utilises this exemption provide information on the location of accessible toilets to service users:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available

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## 15.3 Unisex accessible toilet — ferries and accessible rail cars

### Exemption sought

For a period of five years, if toilets are provided, one unisex accessible toilet without airlock is not required to be provided in each accessible rail car.

### Summary of submissions

**APTJC** supports the application stating that the constraints of carriage and gangway widths will not permit accessible toilets to be included in all rail carriages without further reducing the access path width for all customers.

However, one APTJC member noted that the proposed new temporary exemption could be interpreted in a way that would completely remove the obligation of ensuring a unisex toilet with no airlock is present.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and monitored.

**PWDA** supported the application on the condition that the existing conditions are maintained and that rail operators and providers seek permanent solutions under Equivalent Access and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that in many networks the constraints of narrow gauge necessitates narrow carriage widths, which limit the facilities and amenities that can be accommodated in each carriage.

It would appear that the ARA application raises questions of possible unjustifiable hardship in relation to the position of accessible toilets on existing premises and infrastructure where there is limited space and possible heritage issues.

Arguably this difficulty could be addressed by the existing unjustifiable hardship provisions in the event of a complaint being made due to non-compliance, however, if granted a temporary exemption would provide greater certainty.

The application also states that ARA members concerned have consulted with service users and have developed alternative approaches that aims to provide a seamless journey from the nominated doors through aisle ways to seating or allocated spaces and including necessary services and facilities

Any exemption would affect people with mobility disability who require use of an accessible unisex toilet during a journey.

The 2007 exemption included a number of conditions, specifically:

* one unisex accessible toilet without airlock is provided on an access path from each allocated space; and
* the first toilet provided on an access path from each allocated space is a unisex accessible toilet without airlock.

These conditions were attached in order to minimise the impact on customers in situations where an operator utilised the exemption.

The current ARA application does not include any conditions, however, it is difficult to determine from the application whether ARA members are proposing the original conditions cannot be met.

The ARA application appears to be limited to operators constrained by space limitations arising from narrow gauge rail services and in order to limit the exemption to those situations my recommendation refers specifically to such providers.

Ensuring the availability of information to service users on the location of accessible toilets would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, if toilets are provided, a unisex accessible toilet without airlock is not required in every accessible rail car, subject to the following conditions:

* the exemption is limited to operators constrained by space limitations arising from narrow gauge rail services
* one unisex accessible toilet without airlock is provided on an access path from each allocated space; and
* the first toilet provided on an access path from each allocated space is a unisex accessible toilet without airlock.
* any ARA member utilising the exemption provides a report to the Commission and ARA within 12 months of this decision on which services are affected
* that the report be updated every 12 months, and
* that ARA make the report available on their website.

## 15.4 Toilets - Requirements for accessible toilets — ferries and accessible rail cars

### Exemption sought

The ARA application does not include information on the exemption sought, however, the supplementary submission made by ARA on 14 August 2015 clarified the error and proposed the following exemption.

For a period of three years, compliance with clause 15.4 is not required for narrow gauge and standard gauge accessible rail cars, subject to the following conditions:

* accessible toilets are configured and maintained such that passengers using mobility aids (that conform to the assumptions in Part 40 of the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)) may enter, position their aids, use the accessible toilets and exit.

### Summary of submissions

**APTJC** supports the application referring to the larger dimensional requirements of the Transport Standards over the European Standards, which in their view significantly restricts the capacity of rail operators to purchase ‘off the shelf’ rail cars from European manufacturers.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and be specifically limited to the narrow gauge rail environment..

**All Aboard** also questions the place of narrow gauge rail in the future if it cannot be made fully accessible.

**PWDA** supported the application on the condition that the existing conditions are maintained and that rail operators and providers seek permanent solutions under Equivalent Access to meet the performance requirements and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that due to the width constraints on many carriages, operators are required to balance the need for an adequate access path width and the need for toilet circulation space within the toilet cubicle.

The ARA application appears to sit somewhere between an unjustifiable hardship question and an attempt to obtain certainty for a proposed Equivalent access strategy that seeks to balance completing desires to meet both passageway circulation and accessible toilet circulation space requirements.

Arguably this difficulty could be addressed by simply adopting the Equivalent access strategy and relying on recorded justifications for the strategy in the event of a complaint being made due to non-compliance, however, would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

ARA states that its members affected by these constraints have worked closely with people with disability to identify what constitutes a functional outcome to achieve the best balance.

The application also states that ARA members make available information on their websites and through travel centres and customer contact centres to assist customers to familiarise themselves with the layout of trains. Internal car dimensions are also available on request and in some circumstances customers can arrange a viewing or on-board trial to confirm requirements before booking.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision. A summary of those consultations between the rail sector, representatives of people with disability and the Commission was made publically available for comment prior to a final decision being made.

In particular the 2006 summary of discussions[[9]](#footnote-9) on draft decisions indicated that compliance with 15.4 and referenced AS 1428.1 requirements was not achievable in narrow gauge and standard gauge rail track.

Discussions at the forum on 6 April 2006 appeared to indicate that

* compliance with AS1428.1 specifications is not only difficult but unachievable in narrow rail gauge (1067mm) and standard rail track gauge (1435mm) settings in Australia
* compliance with these specifications is possible in broad rail gauge (1600mm) environments, but provision of unobstructed space to these dimensions may present hazards in a moving vehicle for passengers needing to be able to reach handrails etc for support.

I have considered the views presented in the 2006 summary as part of my assessment and am of the view that the issues raised at that time that led to the decision to grant the exemption with conditions appear to be still valid.

The 2007 exemption included a number of conditions, specifically:

* accessible toilets are configured and maintained such that passengers using mobility aids (that conform to the assumptions in Part 40 of the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)) may enter, position their aids, use the accessible toilets and exit;
* the ARA member concerned consults with the Australian Federation of Disability Organisations every 12 months on the impact of this exemption on passenger amenity; and
* the ARA member concerned reports to the Commission every 12 months during the period of this exemption on the design and configuration of any accessible toilets that have been implemented, the impact of this exemption on passenger amenity, and the outcome of the consultation with the AFDO

In order to limit the effect of any exemption I also recommend a number of conditions be attached.

The ARA application appears to be limited to operators constrained by space limitations arising from narrow and standard gauge rail services and in order to limit the exemption to those situations my recommendation refers specifically to such providers.

Ensuring the availability of information to service users on any limitations in relation to accessible toilets would assist them to plan journeys and if necessary make arrangements for assistance.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, compliance with clause 15.4 is not required for narrow gauge and standard gauge accessible rail cars, subject to the following conditions:

* accessible toilets are configured and maintained such that passengers using mobility aids (that conform to the assumptions in Part 40 of the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)) may enter, position their aids, use the accessible toilets and exit;
* any ARA member utilising this exemption consult with people with disability to identify the dimensions that best balance the requirements for accessible paths of travel and circulation space inside accessible toilets
* the ARA member concerned provides a report to the Commission and ARA within 12 months of this decision on the outcome of consultations
* that ARA make the report available on their website
* any ARA member who utilises this exemption make available information on their websites and through travel centres and customer contact centres on any limitations and dimensions achieved in accessible toilets
* any ARA member who utilises this exemption arrange a viewing or on-board trial to assist passengers to journey-plan before booking if requested.

## 17.5 Signs - Electronic notices

### Exemption sought

For a period of five years, electronic notices may be displayed at rail premises and rail infrastructure for less than 10 seconds where more frequent updating is necessary because of the frequency of services or the volume of information to be displayed.

### Summary of submissions

**APTJC** supports this application stating that on a number of train lines the standard is impossible to apply due to complex stopping patterns.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored.

**PWDA** supported the application on the condition that the existing conditions are maintained and that rail operators and providers seek permanent solutions under Equivalent Access to meet the performance requirements and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application refers to difficulties in fully meeting the requirements of clause 17.5 for a number of reasons including the need to quickly provide changes of information when service disruption occurs and at stations with complex stopping patterns where real-time accuracy is required.

Any exemption in this area would potentially impact on people with low vision and people with learning or cognitive disability who many have difficulty accessing information that changed quickly.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision and while the exemption was granted it was subject to a number of conditions aimed at monitoring the effect it had on service users.

The application referred to the roll-out of new passenger information display systems (PIDs) that provide both audio and visual information and alternative sources of information including Smartphone applications.

The ARA application appears to sit somewhere between an unjustifiable hardship question and an attempt to obtain certainty for an Equivalent access strategy that includes a range of alternative communication systems that aim to deliver sufficient information to meet the intent of clause 17.5.

Arguably this difficulty could be addressed by simply adopting the Equivalent access strategy and relying on recorded justifications for the strategy in the event of a complaint being made due to non-compliance, however, if granted a temporary exemption would deliver greater certainty and provide an opportunity to give direction to actions required to maintain progress in reducing the impact on people with disability.

Maintaining and reporting on progress in the development and roll-out of effective alternative information display systems is an important part of reducing the impact of any exemption.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, electronic notices may be displayed at rail premises and rail infrastructure for less than 10 seconds where more frequent updating is necessary because of the frequency of services or the volume of information to be displayed subject to the following conditions

* any ARA member utilising this exemption provide a report to the Commission and ARA within 12 months of this decision on progress in the development and availability of alternative passenger information display systems
* the report be updated every 12 months
* that ARA make the report available on their website

## 18.1 Tactile ground surface indicators - Location

### Exemption sought

For a period of five years, for existing rail premises and rail infrastructure compliance with clause 18.1 of the Transport Standards and Part H2.11 of the Premises Standards is not required.

### Summary of submissions

**APTJC** supports the application referring to the often-quoted claim that TGSI can create trip hazards. APTJC also refers to technological solutions that are being trialled including Bluetooth beacons that provide audible directions.

**All Aboard** does not support the application stating that ARA members have had 8 years to develop architectural solutions and consult with the disability community on the use of TGSI and alternatives.

**PWDA** acknowledges the need for a flexible approach to the use of TGSI from station to station and supports the application on condition that the existing reporting conditions are maintained and that work begin on Equivalent access solutions on a station-by-station basis in consultation with people with disability, particularly those who have vision and mobility disability and with access experts who advocate for customers with disability.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application states that a continuation of the existing temporary exemption is needed as further research and consultation is required to determine the optimal use and location of TGSI’s in a rail environment.

I note the comment made by All Aboard that ARA members have had 8 years to complete any necessary research and consultation.

The exemption sought refers to clause 18.1 of the Transport Standards and covers the installation of TGSI at stairways, ramps, changes of direction, overhead obstructions below a height of 2000 mm, and hazards within a circulation space or adjacent to a path of travel.

While clause 18.1 of the Transport Standards includes reference in brackets to AS 1428.2 clause 18.1 I do not consider that to be a requirement that all locations listed in AS 1428.2 clause 18.1 are mandatory.

In my view the obligation under clause 18.1 of the Transport Standards is limited to those specifically listed including stairways, ramps, changes of direction, overhead obstructions below a height of 2000 mm, and hazards within a circulation space or adjacent to a path of travel. Areas such as wharfs and railway platforms are specifically addressed under other clauses of the Transport Standards.

There are a number of building elements where TGSI are mandatory under the Premises Standards for buildings other than transport related buildings. These include:

(a) a stairway, other than a *fire-isolated stairway*;

(b) an escalator;

(c) a passenger conveyor or moving walk;

(d) a ramp other than a *fire-isolated ramp*,a step ramp, a kerb ramp or a *swimming pool* ramp; and

(e) in the absence of a suitable barrier:

(i) an overhead obstruction less than 2 m above floor level, other than a doorway; and

(ii) an *accessway* meeting a vehicular way adjacent to any pedestrian entrance to a building, excluding a pedestrian entrance serving an area referred to in clause D3.4, if there is no kerb or kerb ramp at that point;

The exemption sought would exempt the requirement for TGSI in all locations including those that in my view are critical for safe movement within the built environment for people who are blind or who have low vision.

A more targeted exemption in relation to specified locations including ‘changes in direction’ and ‘hazards within a circulation space or adjacent to a path of travel’

while further consultation and research is undertaken would be appropriate.

My recommendation would be to limit the exemption to those areas outside of stairways, escalators, ramps and overhead obstructions below a height of 2000 mm.

The ARA supplementary submission[[10]](#footnote-10) appears to acknowledge the need to provide TGSI at critical safety points:

Industry advises that Hazard TGSIs will always be at platform edges and at grade pedestrian crossings, that is, safety critical areas, but is wary of the over use of directional TGSI’s given the barriers they can impose on other people. The use of directional TGSI’s is a contentious issue which requires further discussion within the disability sector.

Given the amount of time operators have had to develop site-specific strategies I would also recommend any exemption give a specific timeframe of 2 years for the completion of this work.

Reporting on the development of site-specific strategies to provide Equivalent access is an important part of maintaining progress in reducing the impact of any exemption.

As a result my recommendation proposes a way to achieve a more transparent reporting mechanism to assist in reducing the effect of the non-compliance.

This includes a recommendation that in addition to reporting responsibilities for ARA members who utilise the exemption the ARA also make any reports from its members available through its website.

This will assist in ensuring a national picture of where and how the exemptions are operating and the reports will also provide useful data in the upcoming Government announced update of the Transport Standards.

This issue could be addressed in the long-term through negotiated concessions during the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy in consultation with the disability sector.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail premises and rail infrastructure compliance with clause 18.1 of the Transport Standards and Part H2.11 of the Premises Standards is not required other than in relation to stairways, escalators, ramps and overhead obstructions below a height of 2000 mm subject to the condition that any ARA member that utilises this exemption:

* within 2 years of this decision consults with people with disability and orientation and mobility experts to develop site-specific strategies to identify architectural solutions or alternative way finding aids consistent with AS1428.4: 2002 Appendix B
* within 2 years provides a report to the Commission and ARA on the outcome of consultations
* that ARA makes the reports available on its website.

## 20.1 Lighting - Illumination levels — premises and infrastructure

### Exemption sought

For a period of five years, compliance with clause 20.1 is not required on rail premises and rail infrastructure, subject to the condition that the ARA member concerned complies in full with the lighting levels set out in ARA’s revised application dated 24 February 2006 (as detailed in the table below).

TABLE 1 – RECOMMENDED LIGHTING LEVELS FOR RAILWAY STATIONS (summary of the Webb report)

### Summary of submissions

**APTJC** supports this application citing the research findings of the Webb Lighting Report and noting that the “core zone” of a station where tickets are sold, information is provided, vending machines, telephones and out of weather seating is placed will have 150 lux minimum maintenance illumination and 200-300 lux at critical points such as above ticket counters, timetables, information posters, vending machines and telephones.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained.

**All Aboard** also raises the question of whether or not the Commission is satisfied that, given full compliance with the Transport Standards in relation to lighting should have been achieved within the first five years of operation of the Transport Standards, full compliance with the conditions of the 2007 exemption has been achieved.

**PWDA** notes that the recommended illumination levels in the Webb Lighting Report have proven to be quite functional for customers with a disability and safely implementable by the ARA's members.

**PWDA**, however, questions whether the exemption should now be required as all rail stations should now be complaint with conditions of the 2007 exemption.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application restates the original reasons for the application that seeks to balance the need for good lighting in the ‘core zone’ of rail stations with the need to ensure minimal light spill into local communities.

This issue was the subject of extensive consultation and negotiation leading up to the initial 2007 exemption decision. A summary of those consultations between the rail sector, representatives of people with disability and the Commission was made publically available for comment prior to a final decision being made.

In its 2007 summary[[11]](#footnote-11) the Commission stated:

In view of the reasons for exemption on this point presented by ARA and the discussion of those reasons in submissions, including endorsement by APTJC, it appears appropriate to grant an exemption from clause 20.1 in the terms proposed by ARA, for a period of 5 years, on the condition for each operator that the lighting levels set out are met in full by 31 December 2007 (the compliance point set by the Standards. An operator not fully meeting the modified obligations in this area by that date would lose the benefit of the exemption and would need to demonstrate unjustifiable hardship in responding to any complaints made under the provisions of the Standards, which would in that event continue to define the operator’s obligations.

I have considered that summary as part of my assessment and am of the view that the issues raised at that time that led to the decision to grant the exemption with conditions appear to be still valid.

While noting the views of PWDA concerning the continuing need for an exemption in this area I consider it to be appropriate to continue the exemption in order to provide clarity for ongoing compliance of existing rail stations and any new stations under construction.

This is an issue that should be addressed in the long-term through an updating of the Transport Standards due to be completed by mid 2017.

### Recommended approach should the Commission grant an exemption

For a period of five years, compliance with clause 20.1 is not required on rail premises and rail infrastructure, subject to the condition that any ARA member utilising the exemption complies in full with the lighting levels set out in ARA’s revised application dated 24 February 2006 (as detailed in the table below).

TABLE 1 – RECOMMENDED LIGHTING LEVELS FOR RAILWAY STATIONS (summary of the Webb report)

## 21.1 Controls - Compliance with Australian Standard — premises and infrastructure

### Exemption sought

For a period of five years, controls in rail premises and rail infrastructure are not required to comply with clause 21.1, subject to the condition that the controls concerned meet the requirement of a maximum 20N force for operation.

### Summary of submissions

**APTJC** supports this application noting the current requirements in AS 1428.1:2009.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained.

**PWDA** supports the application on condition that doors meet the current Premises Standards requirements in relation to force of 20N and that progress in relation to initiatives described in the application involving automatic door openers and door design that balances access and security needs be reported on annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application claims it has proved to be challenging to find suppliers of doors and door hardware that will meet the access requirements prescribed in AS1428.2 and in particular the referenced AS1428.1:2001 in relation to force required to open, swing and hold a door open.

Clause 21.1 of the Transport Standards requires a general compliance with AS 1428.1:2001 clause 11 Controls (not clause 13.5.2 as the ARA application states).

AS 1428.1 clause 11 includes requirements for the design and performance of door hardware, door opening forces, the location of controls such as locking controls for gates and the location of light switches.

The ARA application, however, appears to be specific to requirements for door opening forces.

AS1428.1 in relation to force required including a force of 19.5N to initially open the door, 6N to swing the door and 7.5N to hold the door open between 60 and 90 degrees.

An exemption in this area would affect those people who require use of an accessible unisex toilet who also have difficulty opening heavy doors due to dexterity or strength limitations.

The application refers to more recent technical standards in AS 1428.1:2009 (clause 13.5.2(e)) and notes that many operators can meet these more recent requirements. The application appears to be one seeking certification of more recent technical standards on the grounds that it is not possible to comply with the requirements of the Transport Standards.

During the development of the Premises Standards and revised BCA there was broad agreement between the building and disability sectors that the requirements of AS 1428.1:2001 in relation to door opening forces could not be consistently met for manually opened doors.

As a result agreement was reached to apply a consistent requirement for 20N force.

A broad exemption from all the requirements of AS 1428.1 clause 11 does not appear to be warranted, as the application appears to only express compliance concerns about some aspects of these requirements specifically door opening forces.

The exemption recommended therefore is restricted to those specific issues identified in the application.

An exemption including a requirement that controls comply with current Premises Standards and BCA would reflect the accepted compliance requirements in this area.

This is an issue that should be addressed in the long-term through an updating of the Transport Standards due to be completed by mid 2017.

### Recommended approach should the Commission grant an exemption

For a period of five years, controls in rail premises and rail infrastructure are not required to comply with AS 1428.1:2001 clause 11.1.1(c), subject to the condition that the controls concerned meet the requirement of a maximum 20N force for operation as required under AS 1428.1:2009 clause 13.5.2(e).

## 26.2 Hearing augmentation – listening systems - Public address systems — conveyances

### Exemption sought

For a period of five years, public address systems in rail conveyances are not required to comply with clause 26.2(b).

### Summary of submissions

**APTJC** supports this application stating that hearing augmentation systems are difficult to retrospectively install and can interfere with or receive interference from electrical signaling systems. **APTJC** also noted the availability of alternative ‘real time’ information via mobile phone applications and passenger information systems (PIDs).

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained.

**All Aboard** also questioned the capacity of PIDs to show real-time information as it may be announced by staff and noted that messages and information provided by operators via smart phone “apps” are often received by the customer well after the event to which they relate.

**All Aboard** suggests that ARA members should investigate solutions that may allow on-board PIDs to display messages that mimic, in real-time, any audio announcement that may be made by an authorised staff member.

**PWDA** suggested that PIDs have been widely accepted by the disability sector and that their use offers a solution for both providing Equivalent access and addressing possible questions of unjustifiable hardship. As a result PWDA proposed that this exemption should no longer be required.

**PWDA** proposed that ARA members should provide a Schedule of Works to the AHRC and NAPTAC that details concrete milestones in the rollout and installation of PIDS and that progress reports should be submitted annually to AHRC and the NAPTAC.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

**Mr Stewart** makes a number of points including:

* The scope of application of hearing augmentation references Australian Standards that are over 23 years old and have been superseded by the requirements in the Premises Standards and AS 1428.5:2010
* The ARA application only refers to electrical interference on existing fleet, which, according to Mr Stewart, is not the case for all ARA members citing NSW who currently have ‘very successful hearing augmentation in their trains’.
* Alternative approaches such as PIDs and apps do not offer Equivalent access to some passengers including older and younger passengers who may not be able to read PIDs, people for whom English is a second language, people on low incomes who may not have access to smartphones, people who also have low vision and may not be able to access PIDs or apps and people of short stature who may not be able to see information displays in crowded conveyances.

**Mr Stewart** expressed concern about what he sees as the failure of providers to meet their obligations and questions why an exemption should be granted when there is evidence that some providers can deliver effective hearing augmentation systems.

**Mr Stewart** argues that any exemption must be based on clear evidence of which conveyances are affected, and not provide exemptions for new transport, or across the board exemption for existing rail.

**Mr Kerley** makes a number of points including:

* The Transport Standards reference AS 1428.2 clause 21.1 which is a very old standard that only requires a 10% coverage for a hearing augmentation system
* Technical advances including a number of complex technical factors need to be addressed when providing effective hearing augmentation systems and the Transport Standards need to reference more recent technical specifications
* There are many trams (light rail) and electric traction rail carriages that have successfully installed Assistive Listening systems, including the latest Sydney Trains (Waratah, etc) and Queensland's Tilt trains and the exemption is unnecessary
* Research undertaken on hearing augmentation systems in conveyances such as Hearing Services Report No. 41040156 *Test Report on Hearing Aid Induction in Railway Carriages* had questionable results
* ARA members should make their data publicly and openly available for scrutiny on a case-by-case basis, if they are seeking an exemption.

**Deaf Australia** does not support the application stating that the organisation has not had an opportunity to contribute to developing best practice in delivering visual information, has not been consulted and has not seen any evidence that rail operators have implementation plans to roll out PIDs at all platforms, stops and conveyances.

### Assessment

Clause 26.2 of the Transport Standards states that if there is a public address system installed on a rail conveyance people who are deaf or have a hearing impairment must be able to receive a message equivalent to the message received by people without a hearing impairment. The clause goes on to state that the means of achieving this outcome must comply with AS 1428.2 clause 21.1.

Clause 21.1 of AS 1428.2 simply states that a listening system to aid hearing-impaired people must be installed and made available and must cover at least 10% of the total area of the enclosed space. Clause 21.1 also addresses the need for signage and identification of area covered if the system does not cover the total area of the enclosed space.

While clause 21.1 does not address any technical compliance issues or quality benchmarks in my view it is reasonable to read into the requirement that if a hearing augmentation listening system is used the quality of any listening system must be comparable to the quality of any message received by a person who does not have a hearing impairment.

Any Equivalent access approach to meeting this requirement would also have to show it meets the performance of delivering equivalent messages.

The ARA application states that electrical interference from on-board equipment on existing fleet can adversely affect the performance of hearing augmentation loops and that the listening devices prescribed in Australian Standard 1428.2 are not suitable for use on board trams

I note the recently released (29 July 2015) final report and recommendations of the US Access Board Rail Vehicles Access Advisory Committee that acknowledges technical feasibility issues in rail cars and calls on the US Access Board to consider the matter of technical feasibility further.

<http://www.access-board.gov/guidelines-and-standards/transportation/vehicles/rail-vehicles-access-advisory-committee/final-report#ch2>

**Hearing Assistive Technology**

1. Wherever audible announcements are provided, hearing assistive technology (e.g., hearing induction loops) that has the capability of coupling directly without an additional receiver, to hearing aids and cochlear implants, or other personal hearing devices (or future technologies benefiting deaf persons and persons with hearing loss) shall be provided.
2. Hearing assistive technology (e.g., hearing induction loops and future technologies benefiting deaf persons and persons with hearing loss) shall be provided in every car.

Hearing assistive technology shall provide coverage to the entire car.  *Where it is not technically feasible to provide hearing assistive technology throughout the car, it shall be available to at least two seating areas of the car.  The Access Board should evaluate the technical feasibility of induction loops on rail cars.*(my emphasis)

1. The induction loop signal should meet IEC Standard:  IEC 60118-4:2014 (Electroacoustics - Hearing aids - Part 4:  Induction-loop systems for hearing aid purposes - System performance requirements).

If ARA members were exempt from complying with clause 26.12(b) they would still be subject to clause 26.1(a) which is a performance statement requiring operators to provide a message equivalent to the message received by people without hearing impairment.

The ARA application states that its members are seeking to achieve that through a range of communication methods including:

* Smartphone applications which provide real time journey information;
* Websites with dedicated information on accessibility for each network;
* Phone, National Relay Service for contact with travel contact centres, customer feedback teams, call centres etc;
* SMS/texting service for customers (of particular use for customers who are deaf or have a hearing impairment);
* Visual information at stations and on trains (PIDs);
* Audible information at stations and on trains via public announcement systems (with hearing loops available on the majority of trains and at a significant number of stations);
* On demand information at stations;
* Emergency and disability assistance consoles on board train services; and
* Direct assistance from station staff, or on-board staff.

Whether or not operators can achieve a level of quality on conveyances that delivers a message equivalent to the message received by people without hearing impairment raises technical questions I am not competent to assess given the level of expertise required in this area.

These issues need to be considered by people with expertise and recommendations fed into the mechanism established to update the Transport Standards due to be completed by mid 2017.

As the ARA states in its supplementary submission[[12]](#footnote-12):

The question of whether the legislation is adequate or can be improved is not the subject of the submission for exemption and should be considered in a separate forum.

Given the complexity of the issues my recommendation is to retain the current exemption for a period of 2 years, but attach conditions that would ensure the issue is addressed in time for the completion of the update of the Transport Standards.

### Recommended approach should the Commission grant an exemption

For a period of two years, public address systems in rail conveyances are not required to comply with clause 26.2(b). This exemption is subject to the condition that

* any ARA member utilising this exemption ensures equivalent access for people who are deaf or have a hearing impairment to information provided via the public address system
* the ARA establish a consultative group including technical experts and representatives from the disability sector and in particular from Deaf and hearing impaired community organisations to consider technical feasibility and Equivalent access issues and to provide a report and recommendations to the Commission by December 2016.

## 27.3 Information - Size and format of printing

### Exemption sought

For a period of five years, compliance with clause 27.3(2) is not required for rail conveyances, rail premises and rail infrastructure if alternative colours adopted provide strong contrast, including for people with impaired colour vision.

### Summary of submissions

Some members of **APTJC** support this clause stating it is not practical to implement in all circumstances and the requirement for large font printing has largely been superseded by the wide availability of electronic and real time transport information.

However one member seeks further clarification from the ARA as to whether an exemption for clause 27.3(1) is being sought as Section C (Reasons for seeking temporary exemption) refers to difficulty complying with this section, but there is no reference to it in the exemption sought.

One jurisdiction noted that the use of large print is achievable and provides benefit to the broader community.

**All Aboard** network proposed that if an exemption were granted any conditions to the current exemption be retained and compliance monitored, however, All Aboard notes that there have been numerous complaints that some information is difficult to read because of poor luminance contrast despite the requirement for strong contrast in earlier exemptions.

**PWDA** supported the application on the condition that the existing conditions are maintained and that rail operators and providers seek permanent solutions under Equivalent Access to meet the performance requirements and report to AHRC and NAPTAC annually.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application specifically relates to the requirements of clause 27.3(2), which states that copy must be black on a light background.

The application does not extend to clause 27.3(1) that requires any large print format type to be at least 18 point san serif.

The argument put forward for this exemption is that the requirement reduces the discretion of the operators to appropriately brand their products.

The application does not raise questions of unjustifiable hardship, but simply claims the requirement is not reasonable and that Equivalent access could be provided in an alternate way.

Any exemption in relation to this issue will have the greatest effect on people with low vision who may have difficulty accessing information.

The ARA application refers to information on the Vision Australia website that suggests that luminance contrast has a greater impact on readability than colour contrast.

This is correct and both the BCA and Premises Standards require a minimum of 30% luminance contrast for information signage.

Luminance contrast is the light reflected from one surface or component, compared to the light reflected from another surface or component and while black on white will achieve high levels of luminance contrast that combination is not the only one that will.

A requirement that reflects current requirements under the BCA and Premises Standards would provide an appropriate Equivalent access and in my view it would be reasonable to provide a revised exemption to provide certainty and clarify the need for measurable luminance contrast.

The current exemption condition refers to a requirement for colours that ‘provide strong contrast’ and I recommend that be clarified to require a minimum of 30% luminance contrast.

While the Transport Standards do not specifically refer to the access requirements of people with impaired colour vision the general requirement under 27.1 that ‘General information about transport services must be accessible to all passengers’ places an obligation on operators to ensure the choice of colours does not result in inaccessible information for people with impaired colour vision.

There is such a variety of colour deficit conditions I do not believe it is possible to propose a deemed-to-satisfy compliance condition in relation to the access needs of people with impaired colour vision. The 30% luminance contrast requirements proposed should be effective for most people with impaired colour vision so I have proposed removing reference to impaired colour vision in the recommended approach.

This is an issue that should be addressed in the long-term through an updating of the Transport Standards due to be completed by mid 2017.

### Recommended approach should the Commission grant an exemption

For a period of five years, compliance with clause 27.3(2) is not required for rail conveyances, rail premises and rail infrastructure if alternative colours adopted to provide information achieve a minimum of 30% luminance contrast.

## 28.1 Booked services - Notice of requirement for accessible travel

## 28.2 Booked services - Period of notice of requirement for accessible travel

### Exemption sought

For a period of five years, ARA members operating rail conveyances may require reasonable notice of a requirement for accessible travel, even if this notice period exceeds the period of notice specified for other passengers.

### Summary of submissions

**APTJC** stated general support noting the need of operators to have advanced notice, particularly in situations where coaches replace trains as part of a journey.

One member, however, sought clarification from the ARA as to whether an exemption for clause 28.1 is being sought as the ARA submission only refers to clause 28.2, while other members noted that ‘reasonable notice’ needs to be clearly outlined and communicated.

**All Aboard** network does not support the application noting that people with disability should not be treated differently to other customers and that operators had already had 13 years to achieve accessible travel.

**All Aboard** argued that requiring certain groups to provide additional (undefined) “reasonable” notice simply highlights the inflexibility and inherent inaccessibility of some transport conveyances and infrastructure.

**PWDA** submitted that it is accepted that in some circumstances customers with high support needs may need to give advanced notice of travel requirements to ARA members that provide booked services.

**PWDA** argued, however, that it would be onerous to place this requirement on the majority of customers with disability whose disability has no impact on the ARA members' provision of services.

**PWDA** proposed that ARA members begin a process that clearly informs potential customers with disability of who among them must give advanced notice of requirements for accessible travel and how far in advance they must contact the ARA member.

### Assessment

The ARA application sets out a number of reasons where providing reasonable notice for booked services would be of advantage including:

* It would allow customers with disability an opportunity to discuss their travel requirements at the time of booking,
* It would allow rail operators an opportunity to clearly explain their policies and conditions of travel
* It would allow the operator to ensure any assistance required can be confirmed before travel
* It would enable operators to address situations where rail coaches replace trains as part of a journey and there are limited spaces on coaches
* It would allow operators to sell unbooked seating or spaces on to other customers.

The application covers clause 28.2 and there appears to be no request for exemption in relation to clause 28.1.

The reasons put forward for the exemption appear, in the main, to be an attempt by operators to manage demand rather than claim the requirement overall constitutes an unjustifiable hardship.

The current exemption, however, is not clear about who is required to provide longer notice of travel or what is a reasonable notice. For example, the requirement could be interpreted to mean that any person with any disability including a blind person using a guide dog, a Deaf person or a person using a wheelchair could be required to give a day, a week or a months notice.

In reading the 2006 discussion draft on recommendations[[13]](#footnote-13) it is clear that the discussions around the original exemption focussed on those customers who required forms of assistance rather than people with disability generally.

Similarly there was discussion on the question of what constituted a reasonable booking time:

In some circumstances some passengers might book 15 minutes before departure, and yet require forms of assistance which it would be reasonable to require more notice of than this. In other circumstances, it might be reasonable for the assistance required to be provided on minimal notice, despite a compulsory advance booking period.

While some of the reasons put forward by ARA would in my view not warrant addition booking ahead time there could be advantage for people with disability and operators in some situations.

For example, booking ahead of time by a person requiring use of one of the limited number of wheelchair spaces would avoid the chances of someone not being able to be accommodated on a particular train.

A review of a selection of rail service providers overseas indicates a general requirement or request for between 24 and 48 hours notice of travel.

For example VIA rail Canada’s website states[[14]](#footnote-14):

Please note that the range of our special and adapted services may vary from one region to another, depending particularly on station facilities and train cars. Therefore, to help ensure that your individual needs are met and that your trip is as comfortable and pleasant as possible, please:

 book travel **48 hours or more** in advance

Similarly National rail UK states on its website[[15]](#footnote-15):

**Travel assistance**

Rail services are now far more accessible than they were in the past and many disabled people are able to use the rail network without assistance.

We will always do our best to help disabled passengers that need assistance, but if you need help when travelling by rail, it is best to book assistance in advance so that we can ensure that any help you may need is provided.

In particular, we would recommend that you book assistance if you:

•    Have a mobility or other disability that means you find getting on and off trains difficult;

•    Are a wheelchair user (on most services you will need to use a boarding ramp and, on some services reserve a wheelchair space on the train service you wish to use);

•    Are a mobility scooter user (there are restrictions on different train operators which need to be checked, a boarding ramp will be required and possibly a reservation for the space onboard).

•    Have a sight impairment and need guiding around a station or help boarding and alighting from your train;

•    Have difficulty walking long distances – at some stations we can provide a station wheelchair or, at some larger stations, access to an electric buggy.

We recommend that you book help 24 hours before you travel. This enables us to: give you as much information as possible before your travel; make alternative arrangements for you if the station is not step free or not staffed at the time you wish to travel; and ensure that there are enough staff for all the assistance requests at a station. Overall, this allows us to provide you with the best possible assistance on the day.

If an exemption is to be granted it should make a clearer statement about who is required to give notice and how much notice is to be given.

This is an issue that should be addressed in the long-term through an updating of the Transport Standards due to be completed by mid 2017.

### Recommended approach should the Commission grant an exemption

For a period of five years, ARA members operating rail conveyances may request up to 48 hours notice from people:

* Requiring use of an allocated space
* Requesting operator assistance to get on or off the conveyance and/or locate an allocated space or seating

Any ARA member utilising this exemption must develop and make available details of advanced booking requirements:

* + via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available

# Consideration of each application – Group 2

## 11.2 Handrails and grabrails - Handrails to be provided on access paths

### Exemption sought

For a period of five years, rail platforms are exempt from clause 11.2.

I note that the ARA application is exactly the same as the one dealt with in Group 1 on page 44 of this report. I expect this is an error and that in fact the ARA is seeking an exemption for its members in relation to those parts of rail premises and infrastructure other than rail platforms.

### Summary of submissions

**APTJC** supported the application, however, one member noted that previously an exemption for this element was deferred on the basis that further consultation between the ARA and interested parties was required to determine with more precision the circumstances in which the exemption would apply and the impact of the ARA’s proposal on people with disability, and that it was unclear whether this consultation had occurred.

**All Aboard** network noted that this application appeared to be the same as the Group 1 application.

**All Aboard** does not support the application arguing that ARA members can reasonably anticipate where handrails are likely to be required.

**PWDA** does not support the application arguing that ARA's members should seek permanent solutions under Equivalent Access and Unjustifiable Hardship.

**PWDA** acknowledged that ARA's members cannot anticipate every instance where handrails would be of assistance, but suggested they can determine general principles of location through consultation directly with people with disability and with access experts who advocate for them.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The Commission deferred its decision in relation to ARA’s application for a temporary exemption from the requirement to comply with clause 11.2 in areas other than rail platforms (addressed in Group 1 of this application) proposing that further discussions was required between the ARA and interested parties, including the Commission, in order to determine:

* with more precision the circumstances in which the exemption would apply; and
* the impact of the ARA’s proposal on people with disabilities.

The ARA application provides no further information on any discussions that have taken place since 2007.

While the issues raised by ARA and its members may be valid the application does not identify any specific instances where over the past 8 years the continued obligations under clause 11.2 (outside of rail platforms) has caused difficulties.

Presumably since 2007 ARA members have either applied clause 11.2 to rail premises (outside of rail platforms) without experiencing unjustifiable hardship or they have relied on Equivalent access strategies that have enabled operators to upgrade premises in a way that avoided the concerns expressed in the application and which have not resulted in complaints.

This view is supported by comments made by the ARA in its supplementary submission[[16]](#footnote-16):

It is current practice to design and install handrails on rail platforms based on risk assessments taking in consideration, customer needs.

Given this I do not consider it necessary at this point it time to address this issue through the granting of an exemption.

In my view this issue would be better addressed in the long-term through the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy following consultation with the disability sector.

### Recommended approach

Decline the application on the basis that no further information has been provided on any discussions that have taken place in relation to this matter since 2007 and no further evidence has been provided about a pressing need to grant the exemption at this point in time. This issue could be effectively addressed through the Government announced process for updating the Transport Standards.

## 21.2 Passenger operated devices for opening and closing doors

### Exemption sought

For a period of five years, Passenger operated devices for opening and closing manual and power assisted doors on conveyances are exempt from complying with clause 21.2.

### Summary of submissions

**APTJC** supported the application, however, one member noted that previously an exemption for this element was deferred on the basis that further consultation between the ARA and interested parties was required to determine whether there are any safety issues involved in relying on operator assistance for the operation of emergency exits, and that it was unclear whether this consultation had occurred.

All Aboard network does not support the application noting that while it may be unlikely that a person with limited hand function would be able to open a locked door in an emergency situation, it may be possible for another passenger to do so where the staff were unable to unlock the doors.

**PWDA** supported the application on condition that ARA members seek permanent solutions consistent with Equivalent access. PWDA also proposes that various emergency evacuation scenarios and the appropriate technical and policy responses require further research and disability sector consultation.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The primary issues raised in the application is the desire of ARA members to install emergency door controls requiring a higher force to use that provided for in referenced Australian Standards. The application states that higher forces are required to avoid inadvertent use and vandalism and that the consequence of inadvertent use in terms of passenger safety need to be considered alongside access issues.

The Commission deferred decision in relation to the original application from ARA in 2007 stating at the time:

The Commission has formed the view that further consultation is required between the ARA and interested parties, including the Commission, to determine whether there are safety issues involved in relying on operator assistance for the operation of emergency exits.

The ARA application provides no further information on any discussions that have taken place since 2007.

There are other examples of where potential conflicts between safety questions and access occur and where compromises have been negotiated. For example, the operable parts of door control systems generally must be located between 900mm and 1100mm above the finished floor. Due to safety considerations this requirement does not apply to early childhood centres, swimming pool barriers or similar situations.

Alternative solutions aimed at providing equivalent access in these situations are often adopted in the built environment.

Presumably since 2007 ARA members have either applied the requirements of clause 21.2 to emergency door controls without negative consequence, or they have installed emergency door controls to meet their preferred specifications on the basis that to do otherwise would be a risk to passengers generally and would be defendable on the grounds of unjustifiable hardship if subject to a complaint.

Given this, while I believe the issue raised warrants a change to the Transport Standards, I do not consider it necessary at this point it time to address this issue through the granting of an exemption.

In my view this issue would be better addressed in the long-term through the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy following consultation with the disability sector.

### Recommended approach

Decline the application on the basis that no further information has been provided in relation to safety issues involved in relying on operator assistance as identified in 2007 and no further evidence has been provided about a pressing need to grant the exemption at this point in time. This issue could be effectively addressed through the Government announced process for updating the Transport Standards.

## 21.3 Location of passenger operated controls for opening and locking doors

### Exemption sought

The location of passenger operated devices for opening and locking doors on rollingstock are not required to be located according to AS1428.1 (2001) clause 11.1.2 when:

* Varying train/platform heights prevent external door controls being positioned with the ranges specified.
* Weather shields and existing door design limit the available locations to position internal door controls. In these circumstances, controls may be located within 500mm of an internal corner. Operators must ensure appropriate signage directs customers to the door controls.

### Summary of submissions

**APTJC** supported the application with one member noting that further consultation with the disability sector had occurred as recommended by the AHRC when a decision on this element was previously deferred.

**All Aboard** network, while recognising it is difficult to achieve compliance with controls heights to external doors while there is so much variation between platforms and train door heights, does not support the application.

**All Aboard** notes that educing the height differences between platforms and trains will do much toward eliminating barriers to access that are addressed in this and other parts of the Standards.

**All Aboard** also notes that where internal door opening buttons are not fitted to the door leaves, but are placed less than 500mm from a corner, wheelchair or scooter users may be unable to reach therm.

**PWDA** supported the application on condition that ARA members seek permanent solutions consistent with Equivalent access.

**PWDA** questions the need for such controls as many ARA members have automatic opening and closing doors suggesting the need for passenger operated doors is discretionary.

**PWDA** also proposes that appropriate technical and policy responses require further research and disability sector consultation.

**VCOSS** stated that, in the event of the Commission granting any exemption, the limitations or conditions listed in the *Overview of submissions* section above should apply.

### Assessment

The ARA application concerns the location of passenger operated door controls and specifically two issues:

1. On external door controls it is not always possible to ensure controls are within the 900mm to 1100mm range due to varying train/platform heights
2. On some internal doors the control may need to be located within 500mm of an internal corner or on the door leaf itself due to the placement of windshields (glass partitions) to screen people seating in the adjacent seating from the vestibule area and the impact of weather conditions when the carriages external doors are open.

These circumstances would only arise where operators have conveyances that require passengers to operate controls to open doors.

The specifications referred to in AS 1428.1 are based on reach range research aimed at ensuring the 80th percentile of people who use mobility aids such as wheelchairs and scooters can reach controls. As a result some people who use wheelchairs or scooters may be disadvantaged by any exemption in relation to location of door opening controls.

In 2007 the Commission deferred its decision on ARA’s application for a temporary exemption from clause 21.3 stating that further consultation was required between the ARA and interested parties to determine whether the ARA proposal results in access remaining possible for people needing to approach the door controls side on.

The application reports that ARA members have undertaken consultation in relation to the location of fixtures and fittings on trains (including the location of door buttons) with the disability sector and customers with a disability.

The application reports on consultations held as part of the design and construction phases for new suburban trains by one ARA member.

These consultations are reported to have concluded that representatives from the disability sector ‘preferred door buttons to be located on door leaves (as per design for new trains) if this is not possible then locating buttons as close to the door as possible, with accessible signage was an acceptable alternative to participants’.

While this information is of interest it does not answer the question posed in the Commission’s 2007 decision concerning the effect of an exemption on the ability of people using wheelchairs and scooters to approach the door controls side on.

Presumably since 2007 ARA members have either:

* been complying with the requirements of clause 21.3
* not been complying with the requirements of clause 21.3 in relation to the variable height of the external controls, but have not been subject to complaints requiring use of a defence of unjustifiable hardship
* been installing internal door controls either on the leaf door or in a location other than required by clause 21.3 along with appropriate signage as a form of Equivalent access.

Given this, while I believe the issues raised warrant a change to the Transport Standards, I do not consider it necessary at this point it time to address this issue through the granting of an exemption.

In my view this issue would be better addressed in the long-term through the upcoming Government supported update of the Transport Standards or failing that through the development and recording of an Equivalent access strategy following consultation with the disability sector.

### Recommended approach

Decline the application on the basis that no further evidence has been provided about a pressing need to grant the exemption at this point in time. This issue could be effectively addressed through the Government announced process for updating the Transport Standards.

# Consideration of each application – Group 3 - Application for temporary exemptions from the Premises Standards

The ARA application also seeks temporary exemptions from the Premises Standards Part H where building related features are duplicated.

**H2.2 (1) Accessways – Unhindered passage**

### Exemption sought

Part 1: Temporary exemption: rail premises and rail infrastructure

* For a period of five years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.

Part 2: Temporary exemption: existing rail premises and existing rail infrastructure

* For a period of three years, an access path is required to provide entrance and exit only at a single boundary point for existing rail stations.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 2.1 Access paths – Unhindered passage – Part 1 and Part 2.

### Recommended approach should the Commission grant an exemption

*Part 1*

For a period of five years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.

This exemption is subject to the following conditions:

* any member of the ARA utilising this exemption provides a written report to the Commission and ARA within 12 months of this exemption and updated every 12 months on:
	+ action taken to improve safe use of level crossings where they form part of an access path
	+ progress made in the removal of level crossings, and
	+ any developments in research into possible technical solutions for bridging flange gaps
* the ARA make such reports available to the public through its website.

*Part 2*

For a period of five years, an access path is required to a minimum of one entrance and exit at a single boundary point for existing rail stations where providing access at each entrance would require significant structural building work or not be feasible due to space, topographical or heritage reasons subject to the following conditions:

* The primary station entrance/exit is an accessible entrance.
* An accessible entry is well signposted and directional signage, including the international symbol for access is provided at any inaccessible entry.
* An accessible entrance connects to each platform and all accessible facilities such as any unisex accessible toilet or accessible parking.
* Any inaccessible entrance is upgraded in relation to access features such as handrails, stairway nosings and TGSI where this would not involve significant structural work.
* Any ARA member utilising this exemption ensures that service users can obtain journey-planning information about accessible pathways through station precincts:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available
* Any ARA member utilising this exemption provides a written report to the Commission and ARA within 12 months of this decision on which rail stations have inaccessible entrances and that this report be updated every 12 months.
* The ARA make such reports available to the public through its website.

## H2.2 (3) Access ways

### Exemption sought

For a period of five years, for existing rail premises and existing rail infrastructure:

* where the 1200mm minimum unobstructed width for access paths cannot be met due to structural and technical constraints, an access path with a minimum unobstructed width of 1000mm may be provided;
* the 850mm minimum unobstructed width (applicable to doorways and gateways) is also permitted on access paths for the purposes of passing an obstruction limited to less than 800mm in length; and
* platform edge warning TGSIs are permitted to intrude into access paths.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 2.4 Access paths – Minimum unobstructed width.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail premises and existing rail infrastructure:

* Where the 1200mm minimum unobstructed width for access paths cannot be met due to significant structural, technical or heritage constraints, an access path with a minimum unobstructed width of 1000mm may be provided;
* The 850mm minimum unobstructed width (applicable to doorways and gateways) is also permitted on access paths for the purposes of passing an obstruction limited to less than 800mm in length; and
* Platform edge warning TGSIs are permitted to intrude into access paths.

This exemption is subject to the following conditions:

* Where site constraints result in an access path with a minimum unobstructed width of 1000mm, and where site constraints require further intrusion of TGSIs into the access path such intrusion is the minimum required.
* Where restricted paths of travel exist due to constraints any ARA member utilising this exemption ensure that service users can obtain information about restricted paths of travel at any particular rail station or infrastructure;
* at the location of the restriction, and
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available
* Any ARA member utilising this exemption provide a written report to the Commission and ARA within 12 months of this decision on which rail stations have restricted paths of travel and that report be updated every 12 months.
* The ARA make such reports available to the public through its website.

## H2.2 (6) Accessways

### Exemption sought

For a period of five years, a manoeuvring area in existing rail premises and existing rail infrastructure complying only with the lower end of the range of dimensions stated in AS1428.2 (1992) Clause 6.2 is permitted, to the extent that space constraints do not permit a larger manoeuvring area.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 3.1 Circulation space for wheelchairs to turn in.

### Recommended approach should the Commission grant an exemption

The Commission declines to grant ARA’s application for a temporary exemption in relation to Part 3.1. In my view that the ARA does not require an exemption in order to apply the circulation space requirements in AS1428.2 (1992) Clause 6.2 of 2070mm long by 1540mm wide in situations where the ‘preferred’ requirements of 2270mm x 1740mm cannot be met.

If ARA members are seeking to have the Transport Standards and Premises Standards refer to the options for circulation space requirements for a 60-90 degree and 30-60 degree turn as found in AS 1428.1:2009 clause 6.5 this is a matter that should be raised during the upcoming technical update of the Transport Standards and the current review of the Premises Standards.

## H2.2 (7) Accessways

### Exemption sought

For a period of five years, for existing rail platforms a passing area every 9 metres along any two-way access path that is less than 1800mm wide is permitted.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 4.2 Passing areas - Two-way access paths and aerobridges.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail platforms where structural or heritage constraints exist a passing area every 9 metres along any two-way access path that is less than 1800mm wide is permitted. This exemption is subject to the condition that

* any ARA member utilising this exemption provide a written report to the Commission and ARA within 12 months of this decision on which rail station platforms do not provide passing spaces every 6m where any two-way access path is less than 1800mm wide and that report be updated every 12 months including any measures taken by the ARA member to address any impacts this may have on users.
* the ARA make such reports available to the public through its website.

## H2.4 (2) Handrails and grabrails - Handrails to be provided on access paths

### Exemption sought

For a period of five years, rail platforms are exempt from clause 11.2 (note this should read H2.4(2).

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 11.2 Handrails and grabrails - Handrails to be provided on access paths.

### Recommended approach should the Commission grant an exemption

For a period of five years, rail platforms are exempt from clause H2.4(2) subject to the following condition:

* Where an ARA member receives a request for the installation of a handrail at a specific point on a platform installation will be undertaken unless the operator is of the view that installing a handrail will adversely affect customer flows, reduce the width of access paths or prevent seating from being placed along the building shoreline or affect safety.
* Where a request is made but the installation of a handrail does not proceed the ARA member concerned will provide a report on the request and the reasons for not taking action to the Commission and publish the report on the ARA members website.

## H2.5 Doorways and doors - Compliance with Australian Standard — premises and infrastructure

### Exemption sought

For a period of five years, existing doorways and doors on existing rail platforms are exempt from clause H2.5

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 12.2 Doorways and doors - Compliance with Australian Standard — premises and infrastructure

### Recommended approach should the Commission grant an exemption

For a period of five years, existing doorways and doors on existing rail platforms are exempt from the requirements of AS 1428.1:2001 clause 11.1.1, subject to the condition that the doorways and doors comply with AS 1428.1:2009 clause 13.5.2(e).

## H2.9 Toilets - Location of accessible toilets

### Exemption sought

For a period of five years, for existing rail premises and existing rail infrastructure accessible toilets are not required to be in the same location as other toilets.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 15.2 Toilets - Location of accessible toilets.

### Recommended approach should the Commission grant an exemption

For a period of five years, for existing rail premises and existing rail infrastructure accessible unisex toilets are not required to be in the same location as other toilets where space limitations or essential heritage considerations mean co-location is not feasible, subject to the following conditions:

* the accessible unisex toilet is located on an accessible path of travel that links to other accessible features as close as possible to the other toilets
* directional signage, including the international symbol for access, is provided at the other toilets identifying where the accessible toilet is located
* any ARA member who utilises this exemption provide information on the location of accessible toilets to service users:
	+ via the ARA members’ websites and downloadable fact sheets, and
	+ in person at Travel Centres where they exist, and
	+ via a telephone call to the Customer Contact Centre where available

## H2.11 Tactile ground surface indicators - Location

### Exemption sought

For a period of five years, compliance with clause H2.11 is not required on rail premises and rail infrastructure.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 18.1 Tactile ground surface indicators - Location

### Recommended approach should the Commission grant an exemption

(Note this is already addressed in the recommended approach under clause 18.1 of the Transport Standards in Group 1 of this report as the ARA application referred to both the Transport Standards and Premises Standards).

For a period of five years, for existing rail premises and rail infrastructure compliance with clause 18.1 of the Transport Standards and Part H2.11 of the Premises Standards is not required other than in relation to stairways, escalators, ramps and overhead obstructions below a height of 2000 mm subject to the condition that any ARA member that utilises this exemption:

* within 2 years of this decision consults with people with disability and orientation and mobility experts to develop site-specific strategies to identify architectural solutions or alternative way finding aids consistent with AS1428.4: 2002 Appendix B
* within 2 years provides a report to the Commission and ARA on the outcome of consultations
* that ARA makes the reports available on its website.

## H2.12 Lighting - Illumination levels — premises and infrastructure

### Exemption sought

For a period of five years, compliance with clause H2.12 is not required on rail premises and rail infrastructure, subject to the condition that the ARA member concerned complies in full with the lighting levels set out in the table below.

TABLE 1 – RECOMMENDED LIGHTING LEVELS FOR RAILWAY STATIONS (summary of the Webb report)

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 20.1 Lighting - Illumination levels — premises and infrastructure

### Recommended approach should the Commission grant an exemption

For a period of five years, compliance with clause H2.12 is not required on rail premises and rail infrastructure, subject to the condition that any ARA member utilising the exemption complies in full with the lighting levels set out in ARA’s revised application dated 24 February 2006 (as detailed in the table below).

TABLE 1 – RECOMMENDED LIGHTING LEVELS FOR RAILWAY STATIONS (summary of the Webb report)

## H2.15 Controls - Compliance with Australian Standard — premises and infrastructure

### Exemption sought

For a period of five years, controls in rail premises and rail infrastructure are not required to comply with clause H2.15, subject to the condition that the controls concerned meet the requirement of a maximum 20N force for operation.

### Summary of submissions

Comments from APTJC, All Aboard, PWDA and VCOSS are the same as those summarised in Group 1 applications.

### Assessment

Refer to assessment notes provided under Group 1 - 21.1 Controls - Compliance with Australian Standard — premises and infrastructure.

### Recommended approach should the Commission grant an exemption

For a period of five years, controls in rail premises and rail infrastructure are not required to comply with AS 1428.1:2001 clause 11.1.1(c), subject to the condition that the controls concerned meet the requirement of a maximum 20N force for operation.

# Appendix 1



### Expertise and experience

Over the past 22 years I have worked on disability access issues with a range of industries including the building sector, financial institutions, transport service providers, the internet industry, the TV, cinema and DVD sector and employer groups throughout Australia.

My work has involved high level partnerships and the development of industry standards and strategies to improve access to buildings and services.

This has included the development of:

* Accessible building standards
* Electronic banking standards
* Public transport standards
* TV, cinema and DVD captioning agreements
* Internet and information access guidelines
* Workplace adjustment policies and procedures

Of particular relevance to this project is my involvement in assisting with Commission input to the development of the *Disability Standards for Accessible Public Transport* 2002 (Transport Standards) and subsequent interpretation and application advice to providers and service users.

I also played a central role in the development of the *Disability (Access to Premises – buildings) Standards 2010* (Premises Standards) through membership of the Building Access Policy Committee, its technical committee and a number of Standards Australia committees.

In my previous role at the Australian Human Rights Commission, I developed a number of valuable resources to assist industry and the community better understand the requirements for equitable access and how to achieve compliance with legal obligations. This included:

* Advisory Notes on Access to Premises
* Guideline on access to buildings and services
* The good the bad and the ugly - CD
* Accessible events – a guide for organisers
* Guideline on accessible bus stops

In 2011 I prepared the *Guideline on the application of the Premises Standards* that is the most authoritative reference material on the Premises Standards currently available to industry in Australia. In 2013 I completed an update of this Guideline for the Australian Human Rights Commission in the light of application issues raised since its adoption.

I am an Associate member of the Association of Consultants in Access Australia (ACAA) and in 2012 was awarded the Minister’s Award for Excellence in Disability Reform.

In 2011 I established Michael Small Consulting Pty Ltd and now provide consultancy services to the building and service provider sectors.

Current and past clients include:

* Australian Building Codes Board
* Australian Institute of Building Surveyors
* Australian Human Rights Commission
* Building Commission of Victoria
* Standards Australia
* Institute of Access Training Australia
* Master Builders Tasmania
* Stockland
* Lend Lease
* Overton Projects
* Galloway Building Surveyors
* Lee Tyers Building Surveyors
* Milestone Building Code Certifiers
* 1 Plus 2 Architects
* CIRCA Architects
* MSJ Architecture – Tamworth Hospital
* Shellharbour City Council
* Wollongong City Council
* Marrickville Council
* Hobart City Council
* Southern Water
* Department of Health and Human Services
* Department of Infrastructure, Energy and Resources
* Pitt and Sherry
* Fairbrother
* Common Ground
* SEMF
* Hobart Airport
1. <https://www.humanrights.gov.au/australasian-railways-association-application-temporary-exemption-under-disability-discrimination> [↑](#footnote-ref-1)
2. These additional comments have been considered by me in relation to each individual application. [↑](#footnote-ref-2)
3. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-3)
4. ARA supplementary submission to the Commission dated 14 August 2015 [↑](#footnote-ref-4)
5. ARA supplementary submission to the Commission dated 14 August 2015 – page 5 [↑](#footnote-ref-5)
6. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-6)
7. ARA supplementary submission to the Commission dated 14 August 2015 page 8 [↑](#footnote-ref-7)
8. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-8)
9. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-9)
10. ARA supplementary submission to the Commission dated 14 August 2015 page 10 [↑](#footnote-ref-10)
11. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-11)
12. ARA supplementary submission to the Commission dated 14 August 2015 page 11 [↑](#footnote-ref-12)
13. ARA application for temporary exemption under the DDA: Recommendations (Consultation Draft) 13 September 2006 [↑](#footnote-ref-13)
14. <http://www.viarail.ca/en/travel-info/special-needs> [↑](#footnote-ref-14)
15. <http://www.nationalrail.co.uk/stations_destinations/disabled_passengers.aspx> [↑](#footnote-ref-15)
16. ARA supplementary submission to the Commission dated 14 August 2015 page 9 [↑](#footnote-ref-16)